TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 736.

THE UNION PACIFIC RAILROAD COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JULY 19, 1878.

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1 I. *Petition.—Filed Jan'y* 28, 1876.—*A. H.*

United States Court of Claims.

THE UNION PACIFIC RAILROAD COMPANY
vs.
THE UNITED STATES OF AMERICA. } No. 10899.

To the honorable the judges of the Court of Claims:

Your petitioner, the Union Pacific Railroad Company, respectfully represents:

That it is a corporation duly organized under the laws of the United States.

That in and by an act of Congress of the United States, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes," approved July 1, 1862, and the several acts amendatory thereof, approved July 2, 1864, March 3, 1865, and July 3, 1866, certain rights, powers, donations, grants of land and bonds, rights of way, privileges, and franchises were given and granted to the said Union Pacific Railroad Company, for the purpose of aiding said company in the construction of its railroad and telegraph line, and that the said acts were duly accepted, and its said railroad and telegraph line were duly constructed in conformity therewith by your petitioner.

That under and in pursuance of said acts of Congress, United States bonds, payable in thirty years from their date, bearing interest at
2 6 per cent. per annum, payable by the government semi-annually in lawful money of the United States, were issued in aid of the construction of said railroad to the amount of $27,236,512.

That the grants aforesaid were made upon condition that said company should pay said bonds at maturity, and should keep said railroad and telegraph line in repair and use, and should at all times transmit despatches over said telegraph line, and transport mails, troops, and munitions of war, supplies, and public stores upon said railroad for the government, whenever required to do so by any department thereof, and that the government should at all times have the preference in the use of the same for all the purposes aforesaid, at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service.

That under and in pursuance of the fifth section of the act of Congress, approved July 2d, 1864, amending the act of Congress of July 1st, 1862, above referred to, and the act of Congress approved March 3, 1871, one-half of the amount that might become due to your petitioner for the carriage and transportation of the mails, troops, munitions of war, supplies, and public stores for the United States Government over the railroad of your petitioner was to be applied to the payment of the bonds issued by the government in aid of the construction of said road; and that the remaining half of said amount was to be paid to your petitioner in money, and not to be withheld or applied to the payment of said bonds or the interest thereon.

That your petitioner has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said government.

Your petitioner further states that at various times since the bonds

of the United States were issued in aid of the construction of its road as aforesaid your petitioner has performed service for the Government of the United States, at the request of, and whenever required to do so by, the respective departments thereof, in the transmission of despatches over its telegraph line, and in the carriage and transportation of the mail, troops, munitions of war, supplies, and public stores upon its railroad. That such service was rendered, in some instances,
3 at prices and rates agreed upon at the time between your petitioner and the various departments of the government requiring the services, and in all cases the service was actually rendered by your petitioner on the requisition of the government; that when no special agreement as to prices was made at the time of the service, the prices charged for the same were fair and reasonable rates of compensation, and do not exceed the amounts that were charged to and paid by private parties for the same kind of service at the same date, being the prices established by the regular tariff of your petitioner, issued and in force at said dates.

And that for such part of the services thus performed for the United States as prior to and including the twelfth day of May, 1874, had been approved by the proper officers of the government your petitioner has heretofore recovered in this court the amount due it for said services, and that the judgment of this court, awarding said recovery, has been confirmed on appeal by the Supreme Court of the United States.

That since the said twelfth of May, 1874, claims for other services performed as aforesaid by your petitioner, prior thereto, have been approved and allowed by the proper officers of the government; and farther, that since said period your petitioner has also rendered other services for the United States in the carriage and transportation of the mails of the United States for the Post-Office Department, and also in the carriage and transportation of munitions of war, supplies, and public stores over the railroad of your petitioner, upon the requisition of and for the Quartermaster's Department and the other departments of the government, for all which services bills have been rendered to the proper departments of the government, and your petitioner hereto annexes a true and correct statement or schedule of all said services, including such services as prior to the twelfth day of May, 1874, had not been approved as aforesaid, and thus not embraced in its petition formerly filed in this court as aforesaid, and in said schedule your petitioner has, according to its best knowledge and belief, set out the sums respectively due from the United States therefor, and that the whole amount thus earned and due from the United States is the sum of $1,615,518.27, and your
4 petitioner asks that said statement or schedule may be taken and deemed as part of its petition.

That one-half of said sum so earned by your petitioner, namely, the sum of $807,759.14, should be applied by the Government of the United States to the payment of the bonds issued by the government in the aid of the construction of the railroad of your petitioner, and the other half of said sum so earned, namely, the sum of $807,759.13, should be paid over in money to your petitioner, and that the same is now due to your petitioner and remains unpaid by the government.

That your petitioner alone is the owner of said claims, and the consideration therefor was the service performed by your petitioner, as above stated.

That the Secretary of the Treasury of the United States refuses to pay your petitioner the said claims so allowed, and those also due and payable to your petitioner as aforesaid, but withholds the payment thereof,

alleging, as your petitioner is informed and believes, as a reason for such refusal, that he is required so to do, and your petitioner is not entitled to the payment thereof from the United States under and by virtue of the second section of the act of Congress, approved March 3d, 1873, 17 U. S. Statutes at Large, p. 508, which section is as follows:

"SEC. 2. That the Secretary of the Treasury is directed to withhold all payments to any railroad company and its assigns, on account of freights or transportation over their respective roads, of any kind, to the amount of payments made by the United States for interest upon bonds of the United States issued to any such company, and which shall not have been reimbursed, together with the five per cent. of net earnings due and unapplied, as provided by law; and any such company may bring suit in the Court of Claims to recover the price of such freight and transportation; and in such suit the right of such company to recover the same upon the law and the facts of the case shall be determined, and also the rights of the United States upon the merits of all the points presented by it in answer thereto by them, and either party to such suit may appeal to the Supreme Court; and both said courts shall give such cause or causes precedence of all other business."

That the Postmaster-General of the United States also refuses to pay to your petitioner the said claims so allowed, and which are now due and payable to your petitioner for the mail service as aforesaid,
5 but withholds the payment thereof, alleging, as your petitioner is informed and believes, as a reason for such refusal, that he is required so to do, and that your petitioner is not entitled to the payment thereof under and by virtue of said second section of the act of Congress last referred to.

And your petitioner respectfully claims and insists that the part of the 2d section of the act of Congress of March 3d, 1873, above recited and relied upon by the Secretary of the Treasury in refusing payment of the claims of your petitioner, which directs the Secretary of the Treasury to "withhold all payments to any railroad company, and its assigns, on account of freights and transportations over their respective roads, of any kind, to the amount of payments made by the United States for interest upon bonds of the United States issued to any such company, and which shall not have been reimbursed, together with the five per cent. net earnings due and unapplied as provided by law," was intended to authorize said Secretary to withhold payments for services performed by your petitioner on its said road, aided by the issue of Government bonds, only in order that and until the rights of your petitioner to payment for such services should be determined by the courts, and does not bar, and was not intended to bar, the claims of your petitioner in the premises.

Your petitioner, therefore, by coming into this court, as authorized by said section, bringing suit for the recovery of the claims above mentioned, does not waive its right to claim payment of one-half of the amount earned as aforesaid on its said railroad, but on the contrary your petitioner brings this suit expressly to recover said amounts.

Your petitioner therefore respectfully prays that this honorable court will render judgment in favor of your petitioner and against the United States, as follows, to wit:

First. That the United States be decreed to pay to your petitioner one-half part of the amount so earned by it for the said services so performed for the government as hereinbefore stated, amounting to the sum of $807,759.13.

Second. That the United States give to your petitioner credit on

account of the bonds so issued by it to your petitioner for the
6 remaining one-half part of the amount of its said claim, which half part amounts to the sum of $807,759.14.

Your petitioner prays for such other and further relief in the premises as may be equitable and just, and will ever pray, &c.

THE UNION PACIFIC RAILROAD COMPANY,
Petitioner,
By SIDNEY DILLON,
its President.

WILLIAM E. CHANDLER, *Attorney for Petitioner.*
S. BARTLETT, *of Counsel.*

STATE OF NEW YORK,
Southern District of New York, ss:

Sidney Di lon, of the city of New York and State aforesaid, being duly sworn, deposeth and saith: That he is the president of the Union Pacific Railroad Company, the petitioner in the foregoing petition named; that no assignment or transfer of the claims set forth in said petition, or any part thereof or any interest therein, has been made at any time; that said petitioner is justly entitled to the amounts in said petition claimed from the United States, after allowing all just credits and offsets, and that he believes the facts as stated in said petition are true, and further deponent saith not.

SIDNEY DILLON.

Sworn to before me this 27th day of January, A. D. 1876.
[SEAL.] W'M G. MOORE, *Notary Public.*

7 Schedule referred to in the foregoing petition.

Date rendered or acted upon.	Department.	Amount.
May 14, 1874.	Department of the Interior	$2,505 23
" "	do	355 43
" "	do	693 89
" "	do	81 84
" "	do	431 15
" "	do	570 84
" "	do	1,050 59
" "	do	350 32
" "	do	138 40
" "	do	21 70
" "	do	1 47
" "	do	1,511 60
" "	do	1,314 37
" "	do	100 00
" "	do	207 60
" "	do	54 00
22, "	do	18 88
" "	do	192 00
June 1, "	Quartermaster's Department	3,805 50
" "	do	2 40
" "	do	2,059 28
" "	Department of the Interior	600 00
2, "	do	4 60
" "	Quartermaster's Department	6,198 48
4, "	do	1,363 28
12, "	do	25,193 23
29, "	do	12,157 15
	Amount forward	$60,983 23

Schedule referred to in the foregoing petition—Continued.

Date rendered or acted upon.	Department.	Amount.
8	Amount forward	60,983 23
June 30, 1874.	Post Office Department	70,963 75
" "	do. correction item	41,288 00
July 28, "	Quartermaster's Department	13,434 10
30, "	Department of the Interior	104 55
16, "	Quartermaster's Department	1,237 08
" "	do	527 21
" "	do	1,079 17
" "	do	1 80
" "	do	4 36
" "	do	7,983 98
" "	do	123 67
" "	do	100 94
" "	do	1 50
" "	do	397 64
" "	do	167 78
" "	do	393 87
31, "	do	9,047 07
" "	do	4 40
" "	do	6 43
" "	do	5 24
" "	do	2 23
" "	do	87 65
" "	do	644 26
" "	do	1,283 56
2, "	Department of the Interior	45 20
Aug. 3, "	Quartermaster's Department	1,310 12
" "	do	1,966 04
" "	do	6,328 17
" "	do	401 45
" "	do	160 94
" "	do	654 00
" "	do	105 35
" "	do	8 00
" "	do	1 00
" "	do	6 86
" "	do	42 00
" "	do	10 56
	Amount forward	$220,913 16
9	Amount forward	$220,913 16
Aug. 3, 1874	Quartermaster's Department	525 68
" "	do	56 99
" "	do	6 75
" "	do	19 13
" "	do	2,637 63
" "	do	1,108 99
" "	do	3,085 19
" "	do	57
" "	do	21 24
" "	do	1 94
" "	do	120 00
" "	do	89 61
" "	do	1 52
" "	do	16 36
" "	do	954 09
" "	do	86 43
" "	do	699 65
" "	do	2,554 14

Schedule referred to in the foregoing petition—Continued.

Date rendered or acted upon.	Department.	Amount.
Aug. 3, 1874	Quartermaster's Department	6 78
" "	do	27 13
" "	do	490 14
" "	do	46 35
" "	do	220 44
" "	do	86 80
" "	do	302 91
7, "	do	1,264 15
6, "	Second Auditor	128 88
Aug. 8, 1874	Quartermaster's Department	6,096 11
22, "	do	25,183 55
Sept. 3, "	do	27,644 95
" "	do	33 52
5, "	do	3,989 17
9, "	do	10 35
12, "	do	480 21
30, "	Post Office Department	81,285 75
Nov. 20, "	Quartermaster's Department	52,104 68
24, "	do	36,027 85
	Amount forward	$468,328 79
10	Amount forward	$468,328 79
Nov. 27, 1874	Quartermaster's Department	18 28
Dec. 5, "	do	17,823 50
14, "	Department of the Interior	1 00
" "	do	1,323 30
18, "	Quartermaster's Department	8,393 85
24, "	do	162 00
31, "	Post Office Department	81,285 75
Jan. 14, 1875	Department of the Interior	452 40
16, "	Quartermaster's Department	23,695 34
20, "	do	3,555 50
21, "	do	8,964 44
26, "	do	1,101 98
Feb. 10, "	do	25,193 85
" "	Department of the Interior	50
" "	do	283 55
15, "	Quartermaster's Department	444 07
" "	do	342 61
20, "	Department of the Interior	2,899 31
26, "	Quartermaster's Department	6,238 78
M'ch 2, "	do	10,938 01
" "	do	436 00
3, "	do	50
" "	do	53 22
4, "	do	1,432 05
3, "	do	2 75
6, "	do	38,260 89
8, "	do	9,100 01
16, "	Department of the Interior	31 00
15, "	Quartermaster's Department	1,723 00
31, "	Post Office Department	81,285 75
3, "	Quartermaster's Department	894,99
" "	do	2,922 01
" "	do	11,981 17
" "	do	609 62
" "	do	2 24
" "	do	315 56
" "	do	1,312 94
	Amount forward	$811,810 51

Schedule referred to in the foregoing petition—Continued.

Date rendered or acted upon.	Department.	Amount.
11	Amount forward	$811,810 51
M'ch 3, 1875	Quartermaster's department	153 32
" "	do	561 39
" "	do	4 57
" "	do	659 85
5, "	do	33 73
" "	do	5,699 46
" "	do	695 60
" "	do	923 58
" "	do	92 17
" "	do	1,568 42
" "	do	42 05
" "	do	814 55
" "	do	1,710 48
April 3, "	do	13 64
5, "	do	5,216 55
8, "	Department of the Interior	104 30
14, "	Quartermaster's Department	306 39
" "	do	25 26
20, "	do	7,535 31
22, "	do	3,114 00
" "	do	33 84
30, "	Express service for April, 1875	195 81
May 12, "	Quartermaster's Department	472 60
" "	do	1,102 13
" "	do	2,998 15
" "	do	3,301 34
" "	do	32 25
" "	do	2,556 82
" "	do	60 43
31, "	do	44 42
" "	Express service for May, 1875	440 43
June 22, "	Department of the Interior	534 00
30, "	Post Office Department	81,285 75
" "	Express service for June, 1875	12 16
July 2, "	Quartermaster's Department	2,629 15
" "	do	7,793 16
" "	do	7,396 54
	Amount forward	$951,974 11
12	Amount forward	$951,974 11
July 2, 1875	Quartermaster's Department	4,128 29
" "	do	12 52
" "	do	936 42
" "	do	3 85
" "	do	12 60
" "	do	230 00
" "	do	4,606 69
" "	do	122 81
" "	do	619 10
" "	do	743 49
" "	do	53 42
" "	do	170 80
" "	do	2,275 43
" "	do	3,987 28
" "	do	4,968 00
" "	do	2,851 71
" "	do	2,668 44
" "	do	4,648 19

Schedule referred to in the foregoing petition—Continued.

Date rendered or acted upon.	Department.	Amount.
July 7, 1875	Quartermaster's Department	18,864 44
10, "	do	1,358 23
12, "	do	8,914 00
15, "	do	5,750 78
19, "	Department of the Interior	1,403 64
" "	do	308 40
" "	do	676 07
31, "	Express service for July, 1875	121 20
Aug. 10, "	Department of the Interior	2,079 95
12, "	Quartermaster's Department	5,250 81
13, "	do	2,531 83
" "	do	6 86
14, "	do	144 19
31, "	Department of the Interior	282 90
" "	Express service for August, 1875	112 50
Sept. 3, "	Quartermaster's Department	2,082 74
6, "	do	130 20
14. "	Express service, balance March, 1875	89 40
11, "	Quartermaster's Department	18 79
	Amount forward	$1,035,140 08
13	Amount forward	$1,035,140 08
Sept. 16, 1875	Quartermaster's Department	2,637 32
17, "	do	8,935 76
21, "	do	55,953 18
30, "	Post-Office Department	81,285 75
" "	Quartermaster's Department	3,121 67
" "	Express service for September, 1875	106 35
Oct. 5, "	Quartermaster's Department	5,585 96
9, "	do	2,748 97
15, "	do	2,181 28
20, "	do	1,524 92
31, "	Express service for October, 1875	124 32
Nov. 2, "	Department of the Interior	1,147 45
4, "	Quartermaster's Department	11,370 07
6, "	do	10,933 80
5, "	do	186 41
" "	do	34 06
" "	do	9 29
" "	do	10 05
" "	do	663 57
" "	do	225 66
" "	do	145 09
" "	do	218 67
" "	do	180 67
" "	do	31 93
" "	do	10 19
8, "	do	6,528 00
9, "	Department of the Interior	155 00
10, "	do	1,689 27
" "	Quartermaster's Department	10,783 05
" "	do	34,755 96
" "	do	235 39
16, "	do	9,614 49
27, "	do	9,114 29
29, "	do	32,249 94
" "	do	31,524 14
" "	do	58,810 17
" "	do	5,934 79
	Amount forward	$1,425,906 96

Schedule referred to in the foregoing petition—Continued.

Date rendered or acted upon.	Department.	Amount.
14	Amount forward	$1,425,906 96
Dec. 1, 1875	Quartermaster's Department	16,525 48
" "	do	4,379 05
2, "	do	30 62
" "	do	205 39
3, "	Department of the Interior	50
" "	do	627 50
4, "	Quartermaster's Department	29,282 10
6, "	do	2,690 00
7, "	do	17,759 85
9, "	Department of the Interior	105 10
" "	Quartermaster's Department	18,411 54
" "	do	5,642 06
14, "	do	3,618 38
15, "	Department of the Interior	49 05
" "	Quartermaster's Department	41 62
17, "	Department of the Interior	2,242 86
" "	do	23 62
" "	do	219 11
24, "	Quartermaster's Department	6 32
" "	do	66 72
" "	do	1,396 80
" "	do	1 23
" "	do	33 60
" "	do	84 00
" "	do	40 39
" "	do	319 58
" "	do	12 58
" "	do	3 62
" "	do	2 20
" "	do	174 25
" "	do	87 67
" "	do	385 30
" "	do	981 00
" "	do	124 85
" "	do	50
" "	do	443 81
" "	do	541 87
	Amount forward	$1,532,467 08
15	Amount forward	$1,532,467 08
Dec. 24, 1875	Quartermaster's Department	1,470 40
" "	do	1 22
" "	do	216 32
30, "	Land Commissioner	77 50
31, "	Post-Office Department	81,255 75
	Total	$1,615,518 27

Post-office address of claimant: Union Pacific Railroad Company, 44 Equitable Building, Boston, Massachusetts. Sidney Dillon, president, 23 Nassau street, city of New York.

Post-office address of claimants' attorney: W. E. Chandler, 1421 I street, city of Washington, D. C.

16 II. *Traverse.—Filed February* 10, 1876.

And now comes the Attorney General, on behalf of the United States, and makes answer to the petition of the claimant herein, and not confessing the same or any part thereof, denies each and every the allegations therein contained, and calls for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the United States are indebted to the said claimant in the sum of one million six hundred and fifteen thousand five hundred and eighteen dollars and twenty-seven cents, says that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said government, denies the said allegation.

THOMAS SIMONS,
Assistant Attorney General.

17 III. *Motion for leave to amend petition.—Filed and allowed February* 15, 1876.

The petitioner moves for leave to amend the petition by adding a supplemental schedule of amounts claimed for transportation services, making six thousand four hundred and three dollars and four cents, for one-half of which, namely, three thousand two hundred and one dollars and fifty-two cents, judgment is prayed, said amendment being hereto annexed.

Feb. 14, 1876.

By its attorney, W'M E. CHANDLER.

Consent of defendant's counsel.

No objection to the amendment being filed, saving all rights.

JOS. K. McCAMMON,
For the United States.

FEB. 15, 1876.

Allowed at chambers, Feb. 15, 1876.

18 IV. *Amendment of petition.—Filed Feb.* 15, 1876.

The petitioner amends the petition by adding to the amount of earnings claimed for transportation services the sum of $6,403.04, for one-half of which, namely, $3,201.52, judgment is prayed. The following supplemental schedule states said amount of $6,403.04 in detail:

Supplemental schedule.

Time of service.	Department.	Amount.
January, 1870.	Quartermaster's Department	$4 59
November, "	do	35 76
December, "	do	2 92
February, 1871.	do	10 24
" "	do	10 87
May, "	do	106 84
September, 1872.	do	156 84
October, "	do balance	25 36
December, "	Navy Department	15 58
June, 1873.	do	19 63
" "	Quartermaster's Department	77 50
September, "	do	1 13
October, "	do	8 56
" "	do	1 34
" "	do	148 93
" "	do	130 68
" "	do	51 35
" "	Department of the Interior	1,136 57
November, "	do	3,485 30
December, "	do	886 85
February, 1874.	do	86 20
	Total	$6,403 04

THE UNION PACIFIC RAILROAD COMPANY,
Petitioner,
By W'M E. CHANDLER,
Attorney.

Filed February 15, 1876.

19 STATE OF NEW YORK,
Southern District, ss:

The undersigned, Sidney Dillon, president of the Union Pacific Railroad Company, deposeth and saith that no assignment or transfer of the claim set forth in the foregoing amendment of petition, or any part thereof, or any interest therein, has been made at any time; that said petitioner is justly entitled to the amounts in said amendment of petition claimed from the United States, after allowing all just credits and offsets, and that he believes the facts as stated in said amendment of petition are true; and further deponent saith not.

SIDNEY DILLON.

Subscribed and sworn to before me this 12th day of February, 1876.
[L. S.] EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

No. 10899. Filed Feb. 15, 1876.

20 V. *Traverse of amendment to petition.—Filed March* 8, 1876.

And now comes the Attorney-General, on behalf of the United States, and makes answer to the amended petition of the claimant herein; and not confessing the same, or any part thereof, denies each and every the allegations therein contained and calls for strict proof of the same.

And as to so much of the said amended petition as sets forth and avers that the United States are indebted to the said claimant in the

sum of six thousand four hundred and three dollars and four cents, says that they are not indebted to the said claimant in the said sum of money nor any part thereof.

THOMAS SIMONS,
Ass't Att'y-General.

21 VI. *Counter-claim.—Filed by defendants May* 1, 1876.

And now comes the Attorney-General, on behalf of the United States, and says that the above-named claimant, before and at the time of the commencement of this suit, was, and still is, indebted to the defendant, in a large sum of money, to wit, in the sum of $5,000,000, which the defendants set up as counter-claim herein, and set forth the grounds of such defense as follows, namely:

That prior to the 6th day of November, 1869, the claimant was organized as a corporation under and by virtue of the act of Congress, approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes," for the purposes, and upon the terms and conditions in said act, and in sundry acts additional to and
22 amendatory of said act, specified, which act was assented to by the corporation claimant as therein prescribed; and the claimant, from the time of such organization and assent hitherto, has accepted, appropriated, and exercised all the rights, franchises, powers, and privileges, gifts and grants, the said act and subsequent acts provided or conveyed, but subject to all the requirements and conditions thereto annexed, as in the said act and acts expressed, all of which the claimant thereby agreed to perform, and became and is bound to fulfil.

That among other privileges, gifts, and grants, the claimant, for the purposes mentioned in said act of July 1, 1862, obtained from the defendants, for its use and benefit, a grant or grants of bonds of the United States, bearing 6 per centum per annum interest, amounting to a very large sum, to wit, to the sum of $30,000,000, which were issued to the claimant for the purpose and in the manner provided by the fifth section of said act, upon which bonds interest as aforesaid, thereafter and hitherto, has accrued to a large amount, to wit, to the amount of
23 $30,000,000, which said amounts of said bonds and of interest accrued are as yet wholly unpaid by the claimant to the defendants, nor has the claimant's obligation in respect of the said bonds, the said accrued interest thereon, been in anywise cancelled or discharged.

That among other requirements and conditions upon which the last-mentioned and other grants in the said act were made and accepted by the claimant, it is provided in the sixth section of said act that when the railroad which the corporation to be organized thereunder was therein authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy should be completed, at least 5 per centum of the net earnings of said road should annually be applied by the said corporation to the payment of the bonds, which, by the provisions of the said act, should be issued to such corporation as aforesaid, and the interest thereon, until by such and other payments to that end said bonds and interest should be paid.

24 And the defendants aver that the claimant, being organized as aforesaid and exercising the powers and franchise aforesaid, laid out, located, constructed, and furnished the railroad and telegraph line mentioned in the petition, and completed the said road within the mean-

ing and intent of the said provision of the sixth section of said act on the 6th day of November, in the year one thousand eight hundred and sixty-nine, and has ever since maintained and enjoyed the same as a completed road in continuous use in transporting passengers and freight for hire, and otherwise carrying on the usual business of a railroad with the usual appurtenances of such a road; and has received during the period from the said 6th day of November, 1869, to the commencement of this action, as avails of the traffic and business so carried on as aforesaid, an amount of money largely in excess of the cost of such transportation and of all just and lawful expenditure in and for the operation of said railroad during the said period, so that the net earnings of the claimant during the said period have amounted to a very large sum annually, to wit, to the sum of $10,000,000 annually.

25 And the defendants further aver that during each year of the said last-mentioned period it became and was the duty of the claimant to pay to the defendants annually, at the end of each year, 5 per centum of the net earnings aforesaid of the said railroad for the year then next preceding, amounting in each year to a large sum of money, to wit, to the sum of $500,000, to be applied to the payment of the said bonds and interest as in the said act required; yet the claimant has wholly neglected and refused to pay to the defendants the amount of the 5 per centum aforesaid, due in each year, as aforesaid, or any part thereof, when the same became due as aforesaid, or at any time thereafter; and the said sums, amounting in the aggregate to $4,000,000, as aforesaid, together with interest on each of the said sums from the date when the same became due and payable, amounting in the aggregate to a large sum, to wit, the sum of $1,000,000 of interest, are still due and unpaid.

Wherefore the defendants ask judgment for this their counter-
26 claim of $5,000,000 against the claimant, or for so much thereof as they may be entitled to have in judgment, after deducting the amount of any recovery herein which the claimant may lawfully establish, and for such other and further relief as to the court may seem just.

THOMAS SIMONS,
Assistant Attorney-General.

VII. *Demurrer to counter claim.—Filed July 26, 1876.*

And now comes the petitioner in the above-entitled cause, and for answer to the counter claim or declaration in set-off filed by the United States, says that the same and the matters therein contained are not sufficient in law for the said United States to have or maintain its said counter-claim or set-off, and that your petitioner is not bound in law to answer the same; and this it is ready to verify.

Wherefore your petitioner prays judgment that the United States may be barred from having or maintaining its said counter claim or set-off, or any part thereof.

27 And your petitioner shows to the court how the following causes of demurrer, viz: That under and by virtue of the act of Congress approved July 1st, 1862, and the act of Congress in amendment of said last-named act approved July 2nd, 1864, it is provided that one-half part of the compensation that should be earned and become due to your petitioner for services rendered to the United States, in said acts described, should be required to be applied to the payment of the bonds issued to your petitioner by the United States, in said counter claim

set forth, and described, and that the remaining one-half part of said compensation for services should be paid to your petitioner in money and not be withheld, retained, or applied in any manner to the payment of said bonds or the interest thereon.

That the sum which it claims in its said petition to recover
28 from the United States as appears therein is one-half part only of the sums due it for compensation for services rendered to the United States under and in pursuance of said acts, and so the same is not subject to set-off or to said counter-claim so made and set up by the United States.

THE UNION PACIFIC RAILROAD COMPANY,
By W'M E. CHANDLER, *Attorney.*

I, E. H. Rollins, treasurer of the Union Pacific Railroad Company, and in its behalf, declare and say that the above demurrer is not interposed for delay.

E. H. ROLLINS.

Subscribed and sworn to before me, James G. Harris, a notary public, this twenty-fifth day of May, 1876.

29 In testimony whereof I have hereunto set my official seal and affixed my signature the day and year above mentioned.

[SEAL.] JAMES G. HARRIS,
Notary Public.

I, Sidney Bartlett, counsel for the above-named Union Pacific Railroad Company, certify that the above demurrer, in my opinion, is well founded in point of law.

S. BARTLETT.

30 VIII. *Demurrer to counter-claim overruled.*

And now, to wit, February 5, 1877, the demurrer filed herein by the claimant to the counter-claim of the defendants is overruled, with leave to the claimant to answer over.

Judge Loring dissented.

IX. *Amended plea to counter-claim.—Filed by claimant February 5, 1877.*

And now the said Union Pacific Railroad Company, who have heretofore filed a demurrer to the counter-claim of the United States, which demurrer has been overruled by this court, by leave of said court withdraws the same, saving all its rights, and files its answer to said counter claim as follows:

31 This petitioner admits that prior to the 6th day of November, 1869, it was organized as a corporation under and by virtue of the acts of Congress in said counter-claim set forth, and the other acts in addition to and amendment thereof, and that it obtained from the United States the grant or grants of bonds in said counter-claim set forth, upon which bonds interest has accrued and been paid by the United States to a large amount, but the exact amount of said accrued interest so paid is unknown to said petitioner, but is believed by it to exceed the amount of its claim set forth in its said petition against the United States; and it further admits that the whole amount of said bonds is as yet unpaid by the petitioner, the same having not yet fallen due or being payable; that the interest paid by the United States upon said bonds

has been only in part reimbursed by the retention and application thereto of sums earned and due the petitioner for services pursuant to the 6th section of the act of Congress, approved July 1, 1862, and the acts in addition thereto, and that its obligation in respect to said bonds
32 and the accrued interest thereon has not been in anywise cancelled or discharged except as aforesaid.

And your petitioner further admits that in and by the said 6th section of the act of Congress, being one of the acts aforesaid, it is made a condition or requirement that when its said road should be completed, at least five per centum of the net earnings of the same should be annually applied by it the payment of the said bonds and the interest thereon, until by the same and other payments to that end said bonds and interest should be paid.

But your petitioner denies that its said road was completed within the meaning and intent of said provision of the 6th section of the said act on the 6th day of November, 1869, or that it has ever since maintained and enjoyed the same as a completed road, but it avers the same to have been completed on the 1st day of October, 1874.

And your petitioner further denies that from the said 6th day of November, 1869, or from the said 1st day of October, 1874, or
33 from any other period, it has received as the avails of its traffic or business, or from any other source of income, any net earnings whatsoever in any year, or that during any year from and after the said 6th day of November, 1869, or from and after the said 1st day of October, 1874, or from and after any other period, it became and was the duty of your petitioner to pay to the United States annually any sum of money whatsoever as and for five per centum upon its net earnings, to be applied in the manner in said counterclaim set forth.

THE UNION PACIFIC RAILROAD COMPANY,
By S. BARTLETT, *Its Attorney.*

34 *X. Findings of fact and conclusion of law, filed June* 11, 1078.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I. The claimant is the company incorporated by the act of July 1, 1862, "to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes"; and constructed the railroad and telegraph line from Omaha, Nebr., westward $1{,}038\frac{68}{100}$ miles to its point of junction with the Central Pacific Railroad.

II. On the 8th of September, 1865, the Secretary of the Interior invited a board to convene in Washington, for the purpose of adopting some uniform standard of road to which the several companies organized under said act, and the act of July 2, 1864, amendatory thereof (13 Stat. L, 356), should conform. This board convened in Washington on the 1st of February, 1866, and submitted to the said Secretary a journal of their proceedings, in which was embodied a report adopted by the board in regard to the construction of the road; and on the 24th of said month the said Secretary approved those proceedings in a letter addressed to the chairman of the board, in the following terms: "The results arrived at by the board as embodied in the report it has adopted in regard to the construction of the road are approved, and it is hereby directed that said report be used by the directors and commissioners

set forth, and described, and that the remaining one-half part of said compensation for services should be paid to your petitioner in money and not be withheld, retained, or applied in any manner to the payment of said bonds or the interest thereon.

That the sum which it claims in its said petition to recover
28 from the United States as appears therein is one-half part only of the sums due it for compensation for services rendered to the United States under and in pursuance of said acts, and so the same is not subject to set-off or to said counter-claim so made and set up by the United States.

THE UNION PACIFIC RAILROAD COMPANY,
By W'M E. CHANDLER, *Attorney.*

I, E. H. Rollins, treasurer of the Union Pacific Railroad Company, and in its behalf, declare and say that the above demurrer is not interposed for delay.

E. H. ROLLINS.

Subscribed and sworn to before me, James G. Harris, a notary public, this twenty-fifth day of May, 1876.

29 In testimony whereof I have hereunto set my official seal and affixed my signature the day and year above mentioned.

[SEAL.] JAMES G. HARRIS,
Notary Public.

I, Sidney Bartlett, counsel for the above-named Union Pacific Railroad Company, certify that the above demurrer, in my opinion, is well founded in point of law.

S. BARTLETT.

30 VIII. *Demurrer to counter-claim overruled.*

And now, to wit, February 5, 1877, the demurrer filed herein by the claimant to the counter-claim of the defendants is overruled, with leave to the claimant to answer over.

Judge Loring dissented.

IX. *Amended plea to counter-claim.—Filed by claimant February 5, 1877.*

And now the said Union Pacific Railroad Company, who have heretofore filed a demurrer to the counter-claim of the United States, which demurrer has been overruled by this court, by leave of said court withdraws the same, saving all its rights, and files its answer to said counter claim as follows:

31 This petitioner admits that prior to the 6th day of November, 1869, it was organized as a corporation under and by virtue of the acts of Congress in said counter-claim set forth, and the other acts in addition to and amendment thereof, and that it obtained from the United States the grant or grants of bonds in said counter-claim set forth, upon which bonds interest has accrued and been paid by the United States to a large amount, but the exact amount of said accrued interest so paid is unknown to said petitioner, but is believed by it to exceed the amount of its claim set forth in its said petition against the United States; and it further admits that the whole amount of said bonds is as yet unpaid by the petitioner, the same having not yet fallen due or being payable; that the interest paid by the United States upon said bonds

has been only in part reimbursed by the retention and application thereto of sums earned and due the petitioner for services pursuant to the 6th section of the act of Congress, approved July 1, 1862, and the acts in addition thereto, and that its obligation in respect to said bonds
32 and the accrued interest thereon has not been in anywise cancelled or discharged except as aforesaid.

And your petitioner further admits that in and by the said 6th section of the act of Congress, being one of the acts aforesaid, it is made a condition or requirement that when its said road should be completed, at least five per centum of the net earnings of the same should be annually applied by it the payment of the said bonds and the interest thereon, until by the same and other payments to that end said bonds and interest should be paid.

But your petitioner denies that its said road was completed within the meaning and intent of said provision of the 6th section of the said act on the 6th day of November, 1869, or that it has ever since maintained and enjoyed the same as a completed road, but it avers the same to have been completed on the 1st day of October, 1874.

And your petitioner further denies that from the said 6th day of November, 1869, or from the said 1st day of October, 1874, or
33 from any other period, it has received as the avails of its traffic or business, or from any other source of income, any net earnings whatsoever in any year, or that during any year from and after the said 6th day of November, 1869, or from and after the said 1st day of October, 1874, or from and after any other period, it became and was the duty of your petitioner to pay to the United States annually any sum of money whatsoever as and for five per centum upon its net earnings, to be applied in the manner in said counterclaim set forth.

THE UNION PACIFIC RAILROAD COMPANY,
By S. BARTLETT, *Its Attorney.*

34 *X. Findings of fact and conclusion of law, filed June* 11, 1078.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I. The claimant is the company incorporated by the act of July 1, 1862, "to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes"; and constructed the railroad and telegraph line from Omaha, Nebr., westward $1,038\frac{68}{100}$ miles to its point of junction with the Central Pacific Railroad.

II. On the 8th of September, 1865, the Secretary of the Interior invited a board to convene in Washington, for the purpose of adopting some uniform standard of road to which the several companies organized under said act, and the act of July 2, 1864, amendatory thereof (13 Stat. L, 356), should conform. This board convened in Washington on the 1st of February, 1866, and submitted to the said Secretary a journal of their proceedings, in which was embodied a report adopted by the board in regard to the construction of the road; and on the 24th of said month the said Secretary approved those proceedings in a letter addressed to the chairman of the board, in the following terms: "The results arrived at by the board as embodied in the report it has adopted in regard to the construction of the road are approved, and it is hereby directed that said report be used by the directors and commissioners

as a guide for their action in directing or accepting the work. To this end you will cause copies to be furnished those officers as soon as printed."

The report referred to in this letter, as having been adopted by said board, in regard to the construction of the road, was as follows:

Your committee, to whom were referred various communications of experienced and scientific engineers concerning a suitable standard for the work on the Pacific Railroad and its several branches, and to whom was also assigned the duty of presenting to the board proper subjects for its consideration, as contemplated by the call of the honorable the Secretary of the Interior, have the honor to present the following report:

The various locations through which the Pacific Railroad and its branches are destined to run, occupy such a variety of country as to render a specific style of work suited to all localities extremely difficult. The topographical features of the surface, the great variety of soils and lower strata of the earth, the singular variety of climate as to cold and heat, wet and dry, all have to be considered in determining details of location, material, and form of the work. It was probably because of these difficulties, the laws of Congress authorizing the construction give only general or very meager specifications as to the details of the Pacific Railroad.

35 But your committee, after availing themselves of the views expressed by the several engineers to which they have referred, and in contemplation of the reasonable construction of the law of Congress, recommend to the board the adoption of the following general rules, as those which should govern all parties engaged in directing, constructing, or accepting the work:

Every step taken in the work, and especially in the location of lines and grades, should be adapted to ultimate perfection, whatever may be immediate interests or necessities, so as to secure to the nation a grand and complete structure, every way worthy of our country, and honorable to the distinguished men who involve their capital and energies in so vast an enterprise.

Location.—Great care should be observed in the determination of the general and detailed location of the main line and branches, so as to secure the shortest lines consistent with economical grades to the most desirable passes of the mountain ranges. The law names but few points; still, it is clearly the interest of the government, and not prejudical to the companies, to determine such points as a great general line should have, so as to unite, so far as possible, all the great ultimate purposes of a central and convenient channel for the commerce of nations that is likely to traverse the road.

With this general view of the work, careful and extended surveys should be made and well considered.

Grades and curves.—While the law makes the grades and curves adopted on the Baltimore and Ohio Railroad a standard, this is only to be considered as a limit to be adopted in mountain districts. To introduce grades of 116 feet per mile, or curves as sharp as 400 feet radius, on other parts of the road, would manifestly violate the spirit and intent of the law. Grades and curves should be settled upon principles of true economy and adaptation, based upon careful scientific and practical investigations, having due regard both to cost of construction and future working of the road.

It is safe to say, in advance, that on the Platte and Kansas Valleys,

and on similar smooth valleys or level plains, no grade should exceed thirty feet elevation per mile.

Embankments and excavations.—In all parts of the main line of road or branches, embankments should not be less than fourteen feet wide at the grade line. Excavations, if the cuts are lengthy, should be twenty-six feet wide, and in shorter cuts at least twenty-four feet; thus leaving in all cases room for continuous side ditches of ample depth, and width, so as to secure that most essential requisite, a well drained road-bed. Rock excavations should be not less than sixteen feet wide, and all tunnels should be excavated for a double track. Slopes of earth embankments should be one and a half base to one rise. Excavations, except in rock, should have slopes from one to one and a half base to one rise, depending upon the material; or if steeper, then to have increased width at grade, so as to remove the same quantity of earth contained within the slopes.

Mechanical structures.—Culverts and abutments for bridges and drains should be of stone, whenever a durable article can be obtained within a reasonable distance—say from five to eight miles, depending upon circumstances; provided that temporary trestles may be adopted upon assurances, to the satisfaction of the commissioners, that stone abutments will be substituted immediately after the line shall be opened, so that stone can be transported thereon. But if good stone be too remote, then hard-burned brick or wooden trestle-work may be adopted.

36 The wood to be of the most durable character the country will afford; and the wood or brick to be replaced by stone, when that material can be conveyed conveniently by rail. Bridges of stone or iron or wood (such as the Howe truss, or other equally good structure) should be used at the discretion of the company.

Ballasting.—A railroad cannot be considered complete until it is well ballasted. If composed of gravel or broken stone, it should be from 12 to 24 inches thick, depending on the lower material. In view of the settling of new embankments, which require time and rains before ballasting can be properly placed, and also in view of the number of miles required by the law to be constructed annually, the perfect finish of the road-bed in this respect must be progressive, and the work of time. Yet it is the opinion of the board that such work of perfecting the ballast must proceed as usual on first-class railroads; otherwise subsequent sections should not be accepted, because the whole work is not then being carried forward as a great Pacific Railroad, such as the law contemplates.

Cross ties.—Oak or other suitable timber should be used, where it can be obtained with reasonable transportation. When such timber cannot be had for all the ties at reasonable cost, then the best the country affords may be adopted; but if it be cottonwood, or similar soft material, it must be burnettized or kyanized thoroughly, so as to increase its durability. But in all cases the joint-tie should be of oak, or other suitable timber, the better to hold the spikes at these points. There should be at least 2,400 ties to the mile. They should be eight feet long, six inches thick, and, if hewn, six inches on the face. If sawed, they should not be less than eight inches wide, and not less than 2,400 per mile, or such number as will have the same bearing-surface; provided, that if any sawed ties have been already delivered or contracted for only seven inches wide they may be laid down.

Rails.—These are to be of American iron, as required by law, of the best quality, and should weigh sixty pounds to the yard. But in consideration of the great cost of transportation from the present location

of rolling-mills to the remote sections of this road, iron may be adopted which weighs only fifty-six pounds to the yard. In mountain districts, however, where heavier engines will be used, not less than sixty-pound rails should be adopted; provided, that if any of the companies have on hand or in transitu, or contracted for, any rails of different weight from that herein specified, and not under fifty pounds per yard, such rails may be used. The rails should be attached to each tie by spikes driven on both sides of the rail. As the nearest approximation to a continuous rail, the so-called fish-joint is preferred and recommended; but if found that it will retard the progress of the work, the common American wrought-iron chair may be used.

Sidings.—The length of side tracks should be at least six per cent. of the line completed, to be increased as the number of passing trains shall demand. Side tracks should also be laid eight feet apart in the clear between the rails. Wherever cattle guards and road-crossings are necessary they should be made.

Rolling Stock.—Locomotive engines and cars must be provided in liberal proportion to the traffic and the convenient construction, to be increased from time to time, as the completion of additional sections and the increase of business seem to require.

Buildings.—Engine-houses, repair-shops, and station-buildings should be adapted to the wants of the service.

37 At the opening of business, the extent and capacity of buildings may be only such as to provide liberally for the existing rolling stock and the business of the road, and such probable early increase as may seem likely; yet the plans in all cases, both as to the buildings and grounds, should be arranged for prospective enlargements and extensions equal to any future business of the road, the buildings at first erected forming appropriate parts of a complete and systematic whole.

Engine-houses and repair-shops at the principal stations must in all cases be of stone or brick, with good stone foundations. The covering should be slate or metallic, to guard as far as possible against fire.

Water stations should be erected at convenient distances, to suit the wants of the trains.

Extensive and convenient locations of ground should be procured to accommodate a future large business, and the proper titles should be carefully secured. All this is the more desirable, as lands are now easily obtained at moderate prices.

In these specifications, it is believed that nothing is required which may not be regarded as essential to a commodious and complete railroad. Nothing is proposed to retard the progress of the companies. The importance and public desire for accelerated movement have been fully appreciated, and the board earnestly desires to favor and foster the energy and fidelity which now seems to animate those engaged in the construction. But while guarding against delay on the one hand, the public interests require, on the other, a substantial and complete work, and the highest perfection of track reasonably attainable on a new road is expected and projected as the standard to which the workmen are to arrive. The argument in favor of speedy construction must be subordinate to the substantial objects of the road, and the government must be certain to have a work that will convey her mails, troops, and munitions of war, and commerce of the country, with entire certainty, celerity, and convenience. It is the aim of this board to secure all these objects, and it is also our belief that they are not incompatible, it being only necessary, on the part of the government, to insist upon the reasonable require-

ments embodied in this report to hasten the completion of the great work, and at the same time to adapt it to the high public interest which it is intended to subserve.

III. Pursuant to said section 4 of said act of July 1, 1862, the president of the Union Pacific Railroad Company, from time to time as the construction of said railroad progressed, made affidavits, to the effect that successive sections of the road from Omaha westward had been completed and equipped in all respects as required by the act referred to; all of which affidavits are in this third finding set forth in full, with the date at which each was sworn to annexed thereto, as follows, to wit:

No. 1.

John A. Dix, being duly sworn, deposeth and saith, that he is president of the Union Pacific Railroad Company, and in pursuance of the requirements of section 4 of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of the railroad and telegraph line from the Missouri River to the Pacific Ocean," etc., he now states, under oath, that one hundred and five consecutive miles of said railroad, beginning at Omaha and ending at a point one hundred and five miles westward thereof, on the line designated by the maps of said company on file in the Department of the Interior, having [have?] been completed and equipped in all respects as required by the act referred to, as
38 he is informed by the engineer charged with the construction of said line, and as he verily believes to be true; and he further states, under oath, that one hundred and five miles of telegraph have been completed for the said one hundred and five consecutive miles, as he is also advised by the engineer in charge.

JOHN A. DIX, *President.*

Sworn to June 25, 1866.

No. 2.

John A. Dix, being duly sworn, deposeth and saith that he is president of the Union Pacific Railroad Company, and, in pursuance of the requirements of section 4 of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," etc., he now states, under oath, that one hundred and twenty-five consecutive miles of said railroad, beginning at Omaha and ending at a point one hundred and twenty-five miles westward thereof, on the line designated by the maps of said company on file in the Department of the Interior, have been completed and equipped in all respects as required by the act referred to, as he is informed by the engineer charged with the construction of said line, and as he verily believes to be true; and he further states, under oath, that one hundred and twenty-five miles of telegraph have been completed for the said one hundred and twenty-five miles, as he is also advised by the engineer in charge.

JOHN A. DIX,
President U. P. R. R. Co.

Sworn to July 11, 1866.

No. 3.

John A. Dix, being duly sworn, deposeth and saith that he is president of the Union Pacific Railroad Company, and, in pursuance of the

requirements of section 4 of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., he now states under oath that one hundred and sixty consecutive miles of said railroad, beginning at Omaha and ending at a point one hundred and sixty miles westward therefrom, on the line designated by the maps of said company on file in the Department of the Interior, have been completed and equipped in all respects as required by the act referred to, as he is informed by the engineer charged with the construction of said line, and as he verily believes to be true; and he further states, under oath, that one hundred and sixty miles of telegraph have been completed for the said one hundred and sixty consecutive miles, as he is also advised by the engineer in charge.

JOHN A. DIX, *President.*

Sworn to August 7, 1866.

No. 4.

John A. Dix, being duly sworn, deposeth and saith that he is president of the Union Pacific Railroad Company, and, in pursuance
39 of the requirements of section 4 of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., he now states, under oath, that two hundred and five consecutive miles of said railroad, beginning at Omaha and ending at a point two hundred and five miles westward therefrom, on the line designated by the maps of the said company on file in the Department of the Interior, have been completed and equipped in all respects as required by the act referred to, as he is informed by the engineer charged with the construction of said line, and as he verily believes to be true; and he further states, under oath, that two hundred and five miles of telegraph line have been completed for the said two hundred and five consecutive miles, as he is also advised by the engineer in charge.

JOHN A. DIX,
President Union Pacific Railroad Company.

Sworn to September 15, 1866.

No. 5.

John A. Dix, being duly sworn, deposeth and saith that he is president of the Union Pacific Railroad Company, and, in pursuance of the requirements of section 4 of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., he now states, under oath, that two hundred and forty consecutive miles of said railroad, beginning at Omaha and ending at a point two hundred and forty miles westward therefrom, on the line designated by the maps of the said company on file in the Department of the Interior, have been completed and equipped in all respects as required by the act referred to, as he is informed by the engineer charged with the construction of said line, and as he verily believes to be true; and he further states, under oath, that two hundred and forty miles of telegraph have been completed for the said two hundred and forty consecutive miles, as he is also advised by the engineer in charge.

JOHN A. DIX,
President Union Pacific Railroad Company.

Sworn to October 10, 1866.

No. 6.

Thomas C. Durant, being duly sworn, deposeth and saith that he is vice-president of the Union Pacific Railroad Company, and, in pursuance of the requirements of section 4 of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., he now states, under oath, that three hundred and five consecutive miles of said railroad, beginning at Omaha and ending at a point three hundred and five miles westward therefrom, on the line designated by the maps of the said company on file in the Department of the Interior, have been completed and equipped in all respects as required by the act referred to, as he is informed by the engineer charged with the construction of said line, and as he verily believes to be true; and he further states, under oath, that three hundred and five miles of telegraph have been completed for the said three hundred and five consecutive miles, as he is also advised by the engineer in charge.

THOS. C. DURANT.

Vice-President Union Pacific Railroad Company.

Sworn to January 7, 1867.

No. 7.

Oliver Ames, being duly sworn, deposeth and saith that he is president pro tempore of the Union Pacific Railroad Company, and in pursuance of the requirements of section 4 of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., he now states under oath that three hundred and forty-five consecutive miles of said railroad, beginning at Omaha and ending at a point three hundred and forty-five miles westward therefrom, on the line designated by the maps of the said company on file in the Department of the Interior, have been completed and equipped in all respects as required by the act referred to, as he is informed by the engineer charged with the construction of said line, and as he verily believes to be true; and he further states, under oath, the three hundred and forty-five miles of telegraph have been completed for the said three hundred and forty-five consecutive miles, as he is also advised by the engineer in charge.

OLIVER AMES,

President pro tempore Union Pacific Railroad Company.

Sworn to May 29, 1867.

No. 8.

Thomas C. Durant, being duly sworn, deposeth and saith, that he is vice-president of the Union Pacific Railroad Company, and in pursuance of the requirements of section four of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., he now states, under oath, that three hundred and eighty-five consecutive miles of said railroad, beginning at Omaha and ending at a point three hundred and eighty-five miles westward therefrom, on the line designated by the maps of the said company on file in the Department of the Interior, have been completed and equipped in all respects as required by the act referred to, as he is informed by the engineer charged with the construction of the said line, and as he verily believes to be true; and he further

states, under oath, that three hundred and eighty-five miles of telegraph have been completed for the said three hundred and eighty-five consecutive miles, as he is also advised by the engineer in charge.

THO'S C. DURANT,
Vice-President Union Pacific Railroad Company.

Sworn to July 5, 1867.

No. 9.

Oliver Ames, being duly sworn, deposeth and saith, that he is president pro tempore of the Union Pacific Railroad, and in pursuance
41 of the requirements of section four of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., he now states, under oath, that another section of thirty-five miles, commencing at 385th mile-post and ending at 420th mile-post, was completed on the twelfth day of August, 1867, making in all four hundred and twenty (420) consecutive miles of said road, beginning at the initial point on section ten (10), opposite western boundary of the State of Iowa, as fixed by the President of the United States, and ending at a point four hundred and twenty (420) miles westward therefrom, on the line designated by the maps of said company on file in the Department of the Interior, that have been completed and equipped in all respects as required by the act referred to, as he is informed by the engineer charged with the construction of said line and as he verily believes to be true; and he further states, under oath, that thirty-five (35) miles of telegraph have been completed for the said thirty-five (35) consecutive miles, as he is also advised by the engineer in charge.

OLIVER AMES,
President pro tempore.

Sworn to August 27, 1867.

No. 10.

Oliver Ames, being duly sworn, deposeth and saith that he is president pro tempore of the Union Pacific Railroad, and in pursuance of the requirements of section four of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., he now states, under oath, that another section of thirty-five miles, commencing at 420th mile-post and ending at 455th mile post, was completed on the thirteenth day of September, 1867, making in all four hundred and fifty five consecutive miles of said road, beginning at the initial point on section ten (10), opposite western boundary of the State of Iowa, as fixed by the President of the United States, and ending at a point four hundred and fifty-five miles westward therefrom, on the line designated by the maps of said company on file in the Department of the Interior, that have been completed and equipped in all respects as required by the act referred to, as he is informed by the engineer charged with the construction of said line, and as he verily believes to be true; and he further states, under oath, that thirty-five miles of telegraph have been completed for the said thirty-five consecutive miles, as he is also advised by the engineer in charge.

OLIVER AMES,
President pro tempore of Union Pacific Railroad Company.

Sworn to September 25, 1867.

No. 11.

Oliver Ames, being duly sworn, deposeth and saith that he is president of the Union Pacific Railroad, and in pursuance of the requirements of section four of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., he now states, under oath, that another section of thirty-five (35) miles, commencing at 455th mile-post and ending at 490th mile-post, was completed on the eighteenth day of October, 1867, making in all four hundred and ninety (490) consecutive miles of said road, beginning at the initial point on section ten (10), opposite western boundary of the State of Iowa, as fixed by the President of the United States, and ending at a point four hundred and ninety (490) miles westward therefrom, on the line designated by the maps of said company on file in the Department of the Interior, that have been completed and equipped in all respects as required by the act referred to, as he is informed by the engineer charged with the construction of said line, and as he verily believes to be true; and he further states, under oath, that thirty-five (35) miles of telegraph have been completed for the said thirty-five (35) consecutive miles, as he is also advised by the engineer in charge.

42

OLIVER AMES,
President Union Pacific Railroad Company.

Sworn to October 28, 1867.

No. 12.

Oliver Ames, being duly sworn, deposeth and saith that he is president of the Union Pacific Railroad, and in pursuance of the requirements of section four of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., he now states, under oath, that another section of twenty (20) miles, commencing at 490th mile-post and ending at 510th mile-post, was completed on the fifth day of November, 1867, making in all five hundred and ten (510) consecutive miles of said road, beginning at the initial point on section ten (10), opposite western boundary of the State of Iowa, as fixed by the President of the United States, and ending at a point five hundred and ten (510) miles westward therefrom on the line designated by the maps of said company on file in the Department of the Interior, that have been completed and equipped in all respects as required by the act referred to, as his [he is?] informed by the engineer charged with the construction of said line, and as he verily believes to be true; and he further states, under oath, that twenty (20) miles of telegraph have been completed for the said twenty (20) consecutive miles, as he is also advised by the engineer in charge.

OLIVER AMES,
President of the Union Pacific Railroad.

Sworn to November 9, 1867.

No. 13.

Oliver Ames, being duly sworn, deposeth and saith that he is president of the Union Pacific Railroad, and in pursuance of the requirements of section 4 of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the

Missouri River to the Pacific Ocean," &c., he now states, under oath, that another section of thirty miles, commencing at 510th mile-post and ending at 540th mile-post, was completed on the fifth day of January,
43 1868, making in all five hundred and forty (540) consecutive miles of said road, beginning at the initial point on section ten (10), opposite western boundary of the State of Iowa, as fixed by the President of the United States, and ending at a point five hundred and forty (540) miles westward therefrom on the line designated by the maps of said company on file in the Department of the Interior, that have been completed and equipped in all respects as required by the act referred to, as he is informed by the engineer charged with the construction of said line, and as he verily believes to be true; and he further states, under oath, that thirty (30) miles of telegraph have been completed for the said thirty (30) consecutive miles, as he is also advised by the engineer in charge.

OLIVER AMES,
President Union Pacific Railroad.

Sworn to January 10, 1868.

No. 14.

Oliver Ames, being duly sworn, deposeth and saith that he is president of the Union Pacific Railroad, and in pursuance of the requirements of section 4 of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., he now states, under oath, that another section of twenty (20) miles, commencing at 540th mile-post and ending at 560th mile-post, was completed on the twenty-second day of April, 1868, making in all five hundred and sixty (560) consecutive miles of said road, beginning at the initial point on section ten (10), opposite western boundary of the State of Iowa, as fixed by the President of the United States, and ending at a point five hundred and sixty (560) miles westward therefrom, on the line designated by the maps of said company on file in the Department of the Interior, that have been completed and equipped in all respects as required by the act referred to, as he is informed by the engineer charged with construction of said line, and as he verily believes to be true; and he further states, under oath, that twenty (20) miles of telegraph have been completed for the said twenty (20) consecutive miles, as he is also advised by the engineer in charge.

OLIVER AMES,
President Union Pacific Railroad Co.

Sworn to April 23, 1868.

No. 15.

Oliver Ames, being duly sworn, deposeth and saith that he is president of the Union Pacific Railroad, and in pursuance of the requirements of section 4 of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., he now states, under oath, that another section of twenty (20) miles, commencing at 560th mile-post and ending at 580th mile-post, was completed on the seventh (7th) day of May, 1868, making in all five hundred and eighty (580) consecutive miles of said road, beginning at the initial point on section ten (10), opposite western boundary of the State of Iowa, as fixed by the
44 President of the United States, and ending at a point five

hundred and eighty (580) miles westward therefrom on the line designated by the maps of said company on file in the Department of the Interior, that have been completed and equipped in all respects as required by the act referred to, as he is informed by the engineer charged with the construction of said line, and as he verily believes to be true; and he further states, under oath, that twenty (20) miles of telegraph have been completed for the said twenty (20) consecutive miles, as he is also advised by the engineer in charge.

OLIVER AMES,
President of Union Pacific Railroad.

Sworn to May 9, 1868.

No. 16.

Oliver Ames, being duly sworn, deposeth and saith that he is president of the Union Pacific Railroad, and in pursuance of the requirements of section 4 of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., he now states, under oath, that another section of twenty (20) miles, commencing at 580th mile-post and ending at 600th mile-post, was completed on the twenty-first day of May, 1868, making in all six hundred (600) consecutive miles of said road, beginning at the initial point on section ten (10), opposite western boundary of the State of Iowa, as fixed by the President of the United States, and ending at a point six hundred (600) miles westward therefrom on the line designated by the maps of said company on file in the Department of the Interior, that have been completed and equipped in all respects as required by the act referred to, as he is informed by the engineer charged with the construction of said line, and as he verily believes to be true. And he further states, under oath, that twenty (20) miles of telegraph have been completed for the said twenty (20) consecutive miles, as he is also advised by the engineer in charge.

OLIVER AMES,
President of Union Pacific Railroad Company.

Sworn to May 28, 1868.

No. 17.

Oliver Ames, being duly sworn, deposeth and saith that he is president of the Union Pacific Railroad, and in pursuance of the requirements of section 4 of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., he now states, under oath, that another section of twenty (20) miles, commencing at 600th mile-post and ending at 620th mile-post, was completed on the third day of June, 1868, making in all six hundred and twenty (620) consecutive miles of said road, beginning at the initial point on section ten (10), opposite western boundary of the State of Iowa, as fixed by the President of the United States, and ending at a point six hundred and twenty miles westward therefrom by the line designated by the maps of said company on file in the Department of the Interior, that have been completed and equipped in all respects as required by the act referred
45 to, as he is informed by the engineer charged with the construction of said line, and as he verily believes to be true. And he further states, under oath, that twenty (20) miles of telegraph have been

completed for the said twenty (20) consecutive miles, as he is also advised by the engineer in charge.

OLIVER AMES,
President of Union Pacific Railroad.

Sworn to June 4, 1868.

No. 18.

Oliver Ames, being duly sworn, deposeth and saith that he is president of the Union Pacific Railroad, and in pursuance of the requirements of section 4 of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., he now states, under oath, that another section of twenty (20) miles, commencing at 620th mile-post and ending at 640th mile-post, was completed on the fifteenth day of June, 1868, making in all six hundred and forty (640) consecutive miles of said road, beginning at the initial point on section ten (10), opposite western boundary of the State of Iowa, as fixed by the President of the United States, and ending at a point six hundred and forty miles westward therefrom on the line designated by the maps of said company on file in the Department of the Interior, that have been completed in all respects as required by the act referred to, as he is informed by the engineer charged with the construction of said line, and as he verily believes to be true. And he further states, under oath, that twenty (20), miles of telegraph have been completed for the said twenty (20) consecutive miles, as he is also advised by the engineer in charge.

OLIVER AMES,
President of Union Pacific Railroad.

Sworn to June 16, 1868.

No. 19.

Thomas C. Durant, being duly sworn, deposeth and saith that he is vice president of the Union Pacific Railroad Company, and that the president of the said company is absent, and that in such absence the said vice-president is authorized by the by-laws of said company to do and perform all acts which the president might do were he present, and in pursuance of the requirements of section 4 of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., he now states that another section of twenty miles, commencing at 640th mile-post and ending at 660th mile-post, was completed on the 27th day of June, 1868, making in all six hundred and sixty (660) consecutive miles of said road, beginning at the initial point on section ten (10), opposite western boundary of the State of Iowa, as fixed by the President of the United States, and ending at a point six hundred and sixty (660) miles westward therefrom on the line designated by the maps of said company on file in the Department of the Interior, that have been completed and equipped in all respects as required by the act referred to, as he is informed by the engineer charged with the
46 construction of said line, and as he verily believes to be true. And he further states, under oath, that twenty (20) miles of telegraph have been completed for the said twenty (20) consecutive miles, as he is also advised by the engineer in charge.

THO'S C. DURANT,
Vice-President and Acting President.

Sworn to July 9, 1868

No. 20.

Thomas C. Durant, being duly sworn, deposeth and saith that he is vice-president of the Union Pacific Railroad Company, and that the president of the said company is absent, and that, in such absence, the said vice-president is authorized by the by-laws of said company to do and perform all acts which the president might do were he present and in pursuance of the requirements of section 4 of the act of Congress, approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," etc., he now states, under oath, that another section of twenty (20) miles, commencing at 660th mile-post and ending at 680th mile-post, was completed on the 7th day of July, 1868, making in all six hundred and eighty (680) consecutive miles of said road, beginning at the initial point on section ten (10), opposite western boundary of the State of Iowa, as fixed by the President of the United States, and ending at a point six hundred and eighty miles westward therefrom on the line designated by the maps of said company on file in the Department of the Interior, that have been completed and equipped in all respects as required by the act referred to, as he is informed by the engineer charged with the construction of said line, and as he verily believes to be true. And he further states, under oath, that twenty (20) miles of telegraph have been completed for the said twenty (20) consecutive miles, as he is also advised by the engineer in charge.

THO'S C. DURANT,
Vice-President and Acting President.

Sworn to July 8, 1868.

No. 21.

Oliver Ames, being duly sworn, deposeth and saith that he is president of the Union Pacific Railroad, and in pursuance of the requirements of section 4 of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," etc., he now states, under oath, that another section of twenty (20) miles, commencing at 680th mile-post and ending at 700th mile-post, was completed on the twentieth day of July, 1868, making in all seven hundred (700) consecutive miles of said road, beginning at the initial point of section ten (10), opposite western boundary of the State of Iowa, as fixed by the President of the United States, and ending at a point seven hundred (700) miles westward therefrom on the line designated by the maps of said company on file in the Department of the Interior, that have been completed and equipped in all respects as required by the act referred to, as he is informed
47 by the engineer charged with the construction of said line, and as he verily believes to be true. And he further states, under oath, that twenty (20) miles of telegraph have been completed for the said twenty (20) consecutive miles, as he is also advised by the engineer in charge.

OLIVER AMES,
President Union Pacific Railroad.

Sworn to August 12, 1868.

No. 22.

Oliver Ames, being duly sworn, deposeth and saith that he is president of the Union Pacific Railroad, and in pursuance of the requirements of

section 4 of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," etc., he now states, under oath, that another section of twenty (20) miles, commencing at 700th mile-post and ending at 720th mile-post, was completed on the thirtieth day of July, 1868, making in all seven hundred and twenty (720) consecutive miles of said road, beginning at the initial point on section ten (10), opposite western boundary of the State of Iowa, as fixed by the President of the United States, and ending at a point seven hundred and twenty (720) miles westward therefrom on the line designated by the maps of said company on file in the Department of the Interior, that have been completed and equipped in all respects as required by the act referred to, as he is informed by the engineer charged with the construction of said line, and as he verily believes to be true. And he further states, under oath, that twenty (20) miles of telegraph have been completed for the said twenty (20) consecutive miles, as he is also advised by the engineer in charge.

OLIVER AMES,
President of Union Pacific Railroad.

Sworn to August 1, 1868.

No. 23.

Oliver Ames, being duly sworn, deposeth and saith that he is president of the Union Pacific Railroad, and that in pursuance of the requirements of section 4 of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., he now states, under oath, that another section of twenty (20) miles, commencing at the 720th mile-post and ending at the 740th mile-post, was completed on the seventh day of August, 1868, making in all seven hundred and forty (740) consecutive miles of said road, beginning at the initial point on section ten (10), opposite western boundary of the State of Iowa, as fixed by the President of the United States, and ending at a point seven hundred and forty (740) miles westward therefrom on the line designated on the maps of said company on file in the Department of the Interior, that have been completed and equipped in all respects as required by the act referred to, as he is informed by the engineer charged with the construction of said line, and as he verily believes to be true. And he
48 further states, under oath, that another section of twenty miles of telegraph have been completed for the said section of twenty consecutive miles, as he is also advised by the engineer in charge.

OLIVER AMES,
President of Union Pacific Railroad.

Sworn to August 8, 1868.

No. 24.

Oliver Ames, being duly sworn, deposeth and saith that he is president of the Union Pacific Railroad, and in pursuance of the requirements of section 4 of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., he now states, under oath, that another section of twenty (20) miles, commencing at 740th mile-post and ending at 760th mile-post, was completed on the nineteenth day of August, 1868, making in all seven hundred and sixty (760) consecutive miles of said road, beginning at the initial point on section ten

(10), opposite western boundary of the State of Iowa, as fixed by the President of the United States, and ending at a point seven hundred and sixty (760) miles westward therefrom on the line designated by the maps of said company on file in the Department of the Interior, that have been completed and equipped in all respects as required by the act referred to, as he is informed by the engineer charged with the construction of said line, and as he verily believes to be true. And he further states, under oath, that twenty (20) miles of telegraph have been completed for the said twenty (20) consecutive miles, as he is also advised by the engineer in charge.

OLIVER AMES,
President of Union Pacific Railroad.

Sworn to August 19, 1868.

No. 25.

Oliver Ames, being duly sworn, deposeth and saith that he is president of the Union Pacific Railroad, and in pursuance of the requirements of section 4 of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., he now states, under oath, that another section of twenty (20) miles, commencing at 760th mile-post and ending at 780th mile-post, was completed on the 29th day of August, 1868, making in all seven hundred and eighty (780) consecutive miles of said road, beginning at the initial point on section ten (10), opposite western boundary of the State of Iowa, as fixed by the President of the United States, and ending at a point seven hundred and eighty (780) miles westward therefrom on the line designated by the maps of said company on file in the Department of the Interior, that have been completed and equipped in all respects as required by the act referred to, as he is informed by the engineer charged with the construction of said line, and as he verily believes to be true. And he further states, under oath, that twenty (20) miles of telegraph have been completed for the said twenty (20) consecutive miles, as he is also advised by the engineer in charge.

OLIVER AMES,
President of Union Pacific Railroad.

Sworn to September 2, 1868.

49 No. 26.

Oliver Ames, being duly sworn, deposeth and saith that he is president of the Union Pacific Railroad, and in pursuance of the requirements of section 4 of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., he now states, under oath, that another section of twenty (20) miles, commencing at 780th mile-post and ending at 800th mile-post, was completed on the tenth day of September, 1868, making in all eight hundred consecutive miles of said road, beginning at the initial point on section ten (10), opposite western boundary of the State of Iowa, as fixed by the President of the United States, and ending at a point eight hundred miles westward therefrom on the line designated by the maps of said company on file in the Department of the Interior, that have been completed and equipped in all respects as required by the act referred to, as he is informed by the engineer charged with the construction of said line, and as he verily

souri River to the Pacific Ocean," &c., he now states, under oath, that another section of twenty (20) miles, commencing at 900th mile-post and ending at 920th mile-post, was completed on the seventeenth day of November, 1868, making in all nine hundred and twenty (920) consecutive miles of said road, beginning at the initial point on section ten (10), opposite western boundary of the State of Iowa, as fixed by the President of the United States, and ending at a point nine hundred and twenty (920) miles westward therefrom on the line designated by the maps of the company on file in the Department of the Interior, that have been completed and equipped in all respects as required by the act referred to, as he is informed by the engineer charged with the construction of said line, and as he verily believes to be true. And he further states, under oath, that twenty (20) miles of telegraph have been completed for the said twenty (20) consecutive miles, as he is also advised by the engineer in charge.

OLIVER AMES.
President of Union Pacific Railroad.

Sworn to November 19, 1868.

No. 32.

Oliver Ames, being duly sworn, deposeth and saith, that he is president of the Union Pacific Railroad. And in pursuance of the requirements of section 4 of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., he now states, under oath, that another section of twenty (20) miles, commencing at 920th mile-post and ending at 940th mile-post, was completed on the twenty-seventh day of November, 1868, making in all nine hundred and forty (940) consecutive miles of said road, beginning at the initial point on section ten (10),
52 opposite western boundary of the State of Iowa, as fixed by the President of the United States, and ending at a point nine hundred and forty (940) miles westward therefrom on the line designated by the maps of said company on file in the Department of the Interior, that have been completed and equipped in all respects as required by the act referred to, as he is informed by the engineer charged with the construction of said line, and as he verily believes to be true. And he further states, under oath, that twenty (20) miles of telegraph have been completed for the said twenty (20) consecutive miles, as he is also advised by the engineer in charge.

OLIVER AMES,
President of Union Pacific Railroad.

Sworn to December 1, 1868.

No. 33.

Tho's C. Durant, being duly sworn, deposeth and saith that he is vice president of the Union Pacific Railroad Company, and that the president of the said company is absent, and that, in such absence, the said vice-president is authorized by section 5th of the by-laws of said company to do and perform all acts which the president might do were he present. And in pursuance of the requirements of section 4 of the act of Congress entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., he now states, under oath, that another section of twenty (20) miles, commencing at 940th mile-post and ending at 960th mile-post, was completed on the

seventeenth day of December, 1868, making in all nine hundred and sixty (960) consecutive miles of said road, beginning at the initial point on sebtion ten (10), opposite western boundary of the State of Iowa, as fixed by the President of the United States, and ending at a point nine hundred and sixty miles westward therefrom on the line designated by the maps of said company on file in the Department of the Interior, that have been completed and equipped in all respects as required by the act referred to, as he is informed by the engineer in charge of the construction of said line, and as he verily believes to be true. And he further states, under oath, that twenty (20) miles of telegraph have been completed for the said twenty (20) consecutive miles, as he is also advised by the engineer in charge.

THO'S C. DURANT,
Vice President.

Sworn to December 18, 1868.

No. 34.

Oliver Ames, being duly sworn, deposeth and saith that he is president of the Union Pacific Railroad. And in pursuance of the requirements of section 4 of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., he now states, under oath, that another section of forty (40) miles, commencing at 960th mile-post and ending at 1,000th mile-post, was completed on the twenty-first day of January, 1869, making in all one thousand (1,000) consecutive miles of said road, beginning at the initial point on section ten (10), opposite western boundary of the State of Iowa, as fixed by the President
53 of the United States, and ending at a point one thousand (1,000) miles westward therefrom on the line designated by the maps of said company on file in the Department of the Interior, that have been completed and equipped in all respects as required by the act referred to, as he is informed by the engineer charged with the construction of said line, and as he verily believes to be true. And he further states, under oath, that forty miles of telegraph have been completed for the said forty consecutive miles, as he is also advised by the engineer in charge.

OLIVER AMES,
President of Union Pacific Railroad Company.

Sworn to January 22, 1869.

No. 35.

Oliver Ames, being duly sworn, deposeth and saith that he is president of the Union Pacific Railroad. And in pursuance of the requirements of section 4 of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., he now states, under oath, that another section of 86 miles, commencing at 1,000 mile and ending at 1,086 mile-post, was completed on the 10th day of May, 1869, making in all 1,086 consecutive miles of said road, beginning at the initial point on section 10, opposite western boundary of the State of Iowa, as fixed by the President of the United States, and ending at a point 1,086 miles westward therefrom on the line designated by the maps of said company on file in the Department of the Interior, that have been completed and equipped in all respects as required by the act referred to, as he is in-

formed by the engineer charged with the construction of said line, and as he verily believes to be true. And he further states, under oath, that 1,086 miles of telegraph have been completed for the said 1,086 consecutive miles, as he is also advised by the engineer in charge.

OLIVER AMES,
President Union Pacific Railroad Company.

Sworn to May 13, 1869.

IV. On the 23d of December, 1865, the President of the United States, under the authority of section 4 of the said act of July 1, 1862, appointed commissioners to examine and report upon the first section of 40 miles of said road; and some time prior to April 30, 1866, he appointed other commissioners to examine and report upon the second section of 25 miles of said road; and after the making of each of the foregoing affidavits, he appointed other commissioners to examine the sections of the road as successively completed, and report to him in relation thereto. The reports of the commissioners so appointed were made in the first instance to the Secretary of the Interior, who transmitted them to the President, who approved the recommendations of the Secretary of the Interior by writing his approval thereon. The following are the several letters of the said Secretary, with the President's indorsement thereon, and the report of commissioners of September 1, 1866, on which was written the President's approval:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., January 24, 1866.

SIR: I have the honor to submit herewith inclosed, for your action, the report of the commissioners appointed by you on the 23d De-
54 cember, 1865, to examine the first section of forty miles of the Union Pacific Railroad, extending west from the city of Omaha, Territory of Nebraska. The company authorized to build this road having, as shown in the report of the commissioners, obligated itself to remedy, within a reasonable time, the deficiencies in the construction of said section, I respectfully recommend that the same be accepted, and proper steps be ordered for the issue of the bonds and land-grants due the company agreeably to law.

I am, sir, with much respect, your obedient servant,

JA'S HARLAN,
Secretary.

The PRESIDENT.

EXECUTIVE MANSION, *January* 24, 1866.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself directed to carry the same into effect.

ANDREW JOHNSON.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., April 30, 1866.

SIR: I have the honor to submit herewith, for your action, the report of the commissioners, Lieut. Col. J. H. Simpson, Maj. Gen. Samuel R. Curtis, and Hon. W'm M. White, appointed by you to examine and report upon the second section of twenty-five miles of the Union Pacific Railroad, commencing at the fortieth and terminating at the sixty-fifth mile station west from the initial point on the Missouri River, near Omaha.

The commissioners report the alignment and grades excellent, the

excavations and embankments of ample width, except at two or three points of limited extent, the drainage good, and in view of the annexed assurance of the company that they will duly remedy the defects of width of embankment and ballasting pointed out in the report, the commissioners recommend the acceptance of the section, as supplied with all the necessary drains, culverts, viaducts, crossings, sidings, bridges, turn-outs, watering-places, depots, equipments, furniture, and all other appurtenances of a first-class railroad.

I respectfully concur in the recommendations by the commissioners of the acceptance of the said second section of twenty-five miles of the road.

I am, sir, with great respect, your obedient servant.

JA'S HARLAN,
Secretary.

To the PRESIDENT OF THE U. S.

EXECUTIVE MANSION, *May 1st*, 1866.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON.

55 DEPARTMENT OF THE INTERIOR,
Washington, D. C., June 25th, 1866.

SIR: I have the honor to submit herewith, for your action, the report of the commissioners, Brevet Brig. General J. H. Simpson, U. S. A., Hon. W'm M. White, and Hon. W'm P. Smith, appointed by you to examine and report upon the third section of forty miles of the Union Pacific Railroad, commencing at the sixty-fifth and terminating at the one hundred and fifth mile-post west from the initial point on the Missouri River, at Omaha.

The commissioners, in their report, point out some slight defects in the section examined, but since they are such as are unavoidable in work progressing so rapidly, and in view of the recommendations of the commissioners, and the fact that the company have, in good faith, fulfilled the obligations which were imposed upon them as conditions of acceptance of previous sections, and have already commenced to correct some of the defects alluded to in this report, I respectfully recommend the acceptance of the said section of forty miles.

I am, sir, with great respect, your obedient servant.

JA'S HARLAN,
Secretary.

The PRESIDENT OF THE U. S.

EXECUTIVE MANSION, *June 25*, 1866.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON,
Pres. U. S.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., July 12, 1866.

SIR: I have the honor to submit herewith, for your action, the report of the commissioners, Brevet Brig. Gen'l J. H. Simpson, U. S. A., Hon.

W'm M. White, and Hon. W'm Prescott Smith, appointed by you to examine and report upon the fourth section of twenty miles of the Union Pacific Railroad, commencing at the 105th and terminating at the 125th mile-post from the initial point on the Missouri River, at Omaha.

In view of the character of said section and the fact that no special defects are pointed out in the report thereon, I respectfully recommend the acceptance of said section of twenty miles.

I am, sir, with great respect, your obedient servant,

JA'S HARLAN,
Secretary.

The PRESIDENT OF THE U. S.

EXECUTIVE MANSION, *July* 12, 1866.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON,
President of the U. S.

56 DEPARTMENT OF THE INTERIOR,
Washington, D. C., August 8, 1866.

SIR: I have the honor to submit herewith, for your action, the report, dated 1st instant, of the commissioners, Brevet Brig. Gen. J. H. Simpson, U. S. A., Hon. W'm M. White, and Hon. W'm Prescott Smith, appointed by you to examine and report upon the fifth section of thirty-five miles of the Union Pacific Railroad, commencing at the 125th and terminating at the 160th mile-post from the initial point on the Missouri River, at Omaha.

In view of the good general character of the work done on the section, the slight defects pointed out in the report of the commissioners, and the good faith with which the company have heretofore remedied existing deficiencies on the previous section before presenting a subsequent section for examination, and with the understanding that said defects are to be remedied before the next section shall be presented for examination, I respectfully recommend the acceptance of the said fifth section of thirty-five miles, and that the Secretary of the Treasury be instructed to issue the bonds due, agreeably to law, on account of said section.

I am, sir, with great respect, your obedient servant,

JA'S HARLAN,
Secretary.

To the PRESIDENT OF THE U. S.

EXECUTIVE MANSION, *August* 8, 1866.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON,
President of the U. S.

OMAHA, NEBRASKA TERRITORY,
September 1, 1866.

Hon. O. H. BROWNING,
Secretary of the Interior, Washington, D. C.:

SIR: The undersigned commissioners, agreeably to the instructions of the Department of the Interior, dated 22d ultimo, have examined the

6th section of the Union Pacific Railroad, of 45 miles, commencing at the 160th and terminating at the 205th mile-post west from the initial point on the Missouri River, at Omaha, and respectfully submit the following report:

57 *Grades.*

Miles.	Ascending feet per mile.	Miles.	Descending feet per mile.	Miles level.	Total miles.
1.10	2.64	0.85	5.28		
6.90	5.28	0.28	10.56		
5.50	7.92	0.20	13.20		
0.28	9.50	0.28	15.84		
0.80	6.50	0.20	18.48		
1.41	7.00	0.08	19.55		
2.05	13.20	0.40	21.12		
4.40	10.56	0.55	26.40		
2.75	15.84	0.20	8.45		
1.35	21.12	0.38	2.64		
2.70	26.40	0.08	6.50		
0.38	9.30				
0.40	8.60				
0.15	29.30				
0.16	30.30				
0.38	3.80				
0.15	3.70				
0.28	1.70				
0.38	18.48				
0.15	17.42				
0.15	19.70				
0.19	34.32				
32.01		3.50		9.49	45.00

Total ascent, 317.23 feet.
" descent, 46.13 "

Alignment.

Tangent, aggregate	43.55 miles.
Curvature, with radius of 5,730 feet	.13 "
" " " 6,876 "	.31 "
" " " 11,460 "	1.01 "
Total	45.00 "

Sidings at stations, aggregate ..... 6,000 feet.
" between stations, aggregate ..... 800 "
" additional, constructed at Omaha ..... 13,000 "

Weight of iron, 50 pounds to the linear yard.
" chairs, same as in previous reports.

Number of ties in main line ($\frac{2}{5}$ hard, $\frac{3}{5}$ soft), 110,340, or 2,452 to the mile.

Number of ties on the sidings given above, 9,187 or 2,448 to the mile.

Width of embankments and cuts at grade, as in previous reports.

Bridges.—Nine of 1 span each of 10 feet; 6 of 2 span each of 10 feet, trestle piers; 1 of 2 span each of 14 feet, trestle piers; 1 of 3 span each of 16 feet, trestle piers; 1 of 6 span each of 16 feet, trestle pier; 1 of 1 span each of 100 feet, Howe truss.

Water-tanks.—One at Wood River Station; 1 at Kearney Station.

Turn-tables.—One at Kearney Station, temporary.

Station-houses.—Passenger and freight house at Wood River and Kearney Station.

Rolling-stock on entire road.—Fifteen engines, 127 flat cars, 46 box cars, 5 passenger cars, 2 baggage cars, 30 hand cars.

A telegraphic line has been built along the section, connecting with the lines east of the Missouri River.

Your commissioners find the alignment, curves, grades, embank-
58 ments, cuts, and ditches unexceptionable, the ties 8 feet long, 8 inches thick, and if sawed, 6 inches face, if hewn, 8 inches; the bridge structures substantial, and the whole road in good running condition, enabling us to return at the rate of 38 miles per hour.

In conclusion, your commissioners respectfully report the whole road and telegraph line, including said 6th section of 45 miles, commencing at the 160th and terminating at the 205th mile station west of the initial point on the Missouri River, at Omaha, as ready for immediate service, and supplied with all necessary drains, culverts, viaducts, crossings, sidings, bridges, turn-outs, watering places, depots, equipments, furniture, and all other appurtenances of a first-class railroad; the rails and all other iron used of American manufacture of the best quality; and do therefore recommend the acceptance of the said section of 45 miles, and the issue of the bonds and lands as contemplated by law. All of which is respectfully submitted.

J. H. SIMPSON,
Brevet Brig. Gen., U. S. A.,
S. R. CURTIS,
W'M M. WHITE,
Commissioners.

Approved:
ANDREW JOHNSON, *Pres't.*

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Oct. 12, 1866.

SIR: I have the honor to submit herewith, for your action, the report dated 2d inst., of the commissioners, Brevet Brig. General J. H. Simpson, U. S. A., Hon. Samuel R. Curtis, and Hon. W'm M. White, appointed by you to examine and report upon the seventh section of thirty-five miles of the Union Pacific Railroad, commencing at the 205th and terminating at the 240th mile-post west from the initial point on the Missouri River, near Omaha.

The commissioners, in their report, representing the said 7th section of thirty-five miles ready for present service, and completed and equipped as a first-class railroad, I respectfully recommend the acceptance of the same and the issue of the bonds and patents for land due the company, on account of said section, agreeably to law.

I am, sir, with great respect, your obedient servant,
O. H. BROWNING,
Secretary.

The PRESIDENT OF THE U. S.

EXECUTIVE MANSION, *Oct.* 12, 1866.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON,
Pres. of the U. S.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Nov. 6, 1866.

SIR: I have the honor to submit herewith, for your action, the report, dated to-day, of the commissioners, Brevet Brig. General J. H.
59 Simpson, U. S. A., Hon. Samuel R. Curtis, and Hon. W'm M. White, appointed by you to examine and report upon the eighth section of thirty miles of the Union Pacific Railroad, commencing at the 240th and terminating at the 207th mile-post west from the initial point on the Missouri River, near Omaha, in the Territory of Nebraska.

The commissioners, in their report, representing the said eighth section of thirty miles ready for present service, and completed and equipped as a first-class railroad, I respectfully recommend the acceptance of the same and the issue of the bonds and patents for land due the company on account of said section, agreeably to law.

I am, sir, with great respect, your obedient servant,

O. H. BROWNING,
Secretary.

The PRESIDENT OF THE U. S.

EXECUTIVE MANSION, *Nov. 6*, 1866.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON,
Pres. U. S.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Jan'y 2d, 1867.

SIR: I have the honor to submit herewith, for your action, the report, dated December 25th, 1866, of the commissioners, Brevet Brig. General J. H. Simpson, U. S. A., Hon. Samuel R. Curtis, and Hon. W'm M. White, appointed by you to examine and report upon the ninth section of thirty-five miles of the Union Pacific Railroad, commencing at the 270th and terminating at the 305th mile station west from the initial point on the Missouri River, near Omaha, in the Territory of Nebraska.

The commissioners, in their report, representing the said ninth section of thirty-five miles ready for present service, and completed and equipped as a first-class railroad, I respectfully recommend the acceptance of the same, and the issue of the bonds and patents for land due the company on account of said section, agreeably to law.

I am, sir, with great respect, your obedient servant,

O. H. BROWNING,
Secretary.

The PRESIDENT OF THE U. S.

EXECUTIVE MANSION, *January 2*, 1867.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON,
Pres. U. S.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., June 7th, 1867.

SIR: I have the honor to submit herewith, for your action, the report, dated 30th ultimo, of the commissioners, Brevet Brig. General J.

60 H. Simpson, U. S. A., Hon. W'm M. White, and General Frank P. Blair, appointed by you to examine and report upon the tenth (10th) section of forty (40) miles of the road of the Union Pacific Railroad Company, commencing at the 305th mile-post and terminating at the 345th mile-post west from the initial point on the Missouri River, near Omaha, Nebraska.

The commissioners, in their report, represent the said tenth section of forty miles ready for present service, and completed and equipped as a first-class railroad; and as the said company have paid to the said commissioners the per diem and mileage due them under the twenty-first section of the act of Congress approved July 27, 1866, on account of their examination of this section of road, I therefore respectfully recommend the acceptance of the same, and the issue to said company of bonds and of patents for lands due on account of said section, agreeably to the act approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., and the acts amendatory thereof.

I am, sir, with great respect, your obedient servant,

W. T. OTTO,
Acting Secretary.

The PRESIDENT OF THE UNITED STATES.

EXECUTIVE MANSION, *June* 10, 1867.

The within recommendations of the Acting Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON,
Pres. U. S.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., July 5, 1867.

SIR: I have the honor to submit herewith, for your action, the report, dated the 29th ultimo, of the commissioners, Brevet Brig. General J. H. Simpson, U. S. A., Hon. W'm M. White, and General Frank P. Blair, appointed by you to examine and report upon the eleventh (11th) section of forty (40) miles of the road of the Union Pacific Railroad Company, commencing at the 345th and terminating at the 385th mile-post west from the initial point on the Missouri River, near Omaha, Nebraska.

The commissioners, in their report, represent the said eleventh section of forty miles ready for present service, and completed and equipped as a first-class railroad; and as the said company have paid to the said commissioners the per diem and mileage due them under the twenty-first section of the act of Congress approved July 27, 1866, on account of their examination of this section of road, I therefore respectfully recommend the acceptance of the same, and the issue to said company of bonds and of patents for lands due on account of said section, agreeably to the act approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., and the acts amendatory thereof.

I am, sir, with great respect, your obedient servant,

W. T. OTTO,
Acting Secretary.

The PRESIDENT OF THE UNITED STATES.

61 EXECUTIVE MANSION, *July* 5, 1867.

The within recommendations of the Acting Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON,
Pres. U. S.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Aug. 27, 1867.

SIR: I have the honor to submit herewith, for your action, the report, dated the 14th instant, of the commissioners, Brevet Brig. General J. H. Simpson, U. S. Army, Hon. W'm M. White, and General Frank P. Blair, appointed by you to examine and report upon the 12th section of thirty-five miles of the road and telegraph line of the Union Pacific Railroad Company, commencing at the 385th and terminating at the 420th mile-post west from the initial point on the Missouri River, near Omaha, Nebraska.

The commissioners, in their report, represent the said 12th section of thirty-five miles ready for present service, and completed and equipped as a first-class railroad, and that the telegraph line is completed for the same distance; and as the said company have paid to the said commissioners the per diem and mileage due them under the twenty-first section of the act of Congress approved July 27, 1866, on account of their examination of this section of road and telegraph line, I therefore respectfully recommend the acceptance of the same, and the issue to said company of bonds and of patents for lands due on account of said section, agreeably to the act approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., and the acts amendatory thereof.

The said commissioners report that at the date of their examination the company had completed forty-five miles of the road and telegraph line, which they recommend be accepted. The commissioners had no authority to examine and report upon the ten additional miles of road, the instructions limiting the examination to thirty-five miles, and I cannot therefore recommend the acceptance of their report any further than the same was made in accordance with the instructions issued to the commissioners by this department.

I am, sir, with great respect, your obedient servant,

W. T. OTTO,
Acting Secretary.

The PRESIDENT OF THE UNITED STATES.

EXECUTIVE MANSION, *August* 27, 1867.

The recommendation of the Acting Secretary of the Interior, that the thirty-five miles of road and telegraph line be accepted, and the bonds and patents for lands be issued thereon, are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Oct. 1, 1867.

SIR: I have the honor to submit herewith, for your action, the report, dated the 26th ultimo, of the commissioners, Brevet Brig. General
62 J. H. Simpson, U. S. Army, Hon. W'm M. White, and N. D. Bu-

ford, appointed by you to examine and report upon the thirteenth section of thirty-five miles of the road and telegraph line of the Union Pacific Railroad Company, commencing at the 420th and terminating at the 455th mile-post west from the initial point on the Missouri River, near Omaha, Nebraska.

The commissioners, in their report, respresent the said thirteenth section of thirty-five miles ready for present service, and completed and equipped as a first-class railroad, and that the telegraph line is completed for the same distance; and as the said company have paid to the said commissioners the per diem and mileage due them under the twenty-first section of the act of Congress approved July 27, 1866, on account of their examination of this section of road and telegraph line, I therefore respectfully recommend the acceptance of the same, and the issue to said company of bonds and of patents for lands due on account of said section, agreeably to the act approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., and the acts amendatory thereof.

I am, sir, with great respect, your obedient servant,

W. T. OTTO,
Acting Secretary.

The PRESIDENT OF THE UNITED STATES.

EXECUTIVE MANSION, *October* 1, 1867.

The within recommendations of the Acting Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., November 4, 1867.

SIR: I have the honor to transmit herewith, for your action, the report, dated the 29th ultimo, of the commissioners, Mess'rs W'm M. White, Napoleon B. Buford, and John B. Drake, appointed by you to examine and report upon the 14th section of thirty-five miles of the road and telegraph line of the Union Pacific Railroad Company, commencing at the 455th and terminating at the 490th mile-post west from the initial point on the Missouri River, near Omaha, Nebraska.

The commissioners, in their report, represent the said fourteenth section of thirty-five miles ready for present service, and completed and equipped as a first-class railroad, and that the telegraph line is completed for the same distance; and as the said company have paid to the said commissioners the per diem and mileage due them under the 21st section of the act of Congress approved July 27, 1866, on account of their examination of this section of road and telegraph line, I therefore respectfully recommend the acceptance of the same, and the issue to said company of bonds and of patents for lands due on account of said section, agreeably to the act approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., and the acts amendatory thereof.

I am, sir, very respectfully, your obedient servant,

O. H. BROWNING,
Secretary.

The PRESIDENT.

63 EXECUTIVE MANSION, *November* 4, 1867.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., December 10, 1867.

SIR: I have the honor to transmit herewith, for your action, the report, dated the 6th instant, of the commissioners, Mess'rs W'm M. White, Frank P. Blair, and N. B. Buford, appointed by you to examine and report upon the 15th section of twenty miles of the road and telegraph line of the Union Pacific Railroad Company, commencing at the 490th and terminating at the 510th mile-post west from the initial point on the Missouri River, near Omaha, Nebraska.

The commissioners, in their report, represent the said 15th section of twenty miles ready for present service, and completed and equipped as a first-class railroad, and that the telegraph line is completed for the same distance; and as the said company have paid to the said commissioners the per diem and mileage due them under the 21st section of the act of Congress approved July 27, 1866, on account or their examination of this section of road and telegraph line, I therefore respectfully recommend the acceptance of the same, and the issue to said company of bonds and of patents for lands due on account of said section, agreeably to the act approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., and the acts amendatory thereof.

I am, sir, with great respect, your obedient servant,

O. H. BROWNING,
Secretary.

The PRESIDENT.

EXECUTIVE MANSION, *December* 11, 1867.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., January 25, 1868.

SIR: I have the honor to transmit herewith, for your action, the report, dated the 21st instant, of the commissioners, Mess'rs W'm M. White, Frank P. Blair, and N. B. Buford, appointed by you to examine and report upon the 16th section of thirty miles of the road and telegraph line of the Union Pacific Railroad Company, commencing at the 510th and terminating at the 540th mile-post west from the initial point on the Missouri River, near Omaha, Nebraska.

The commissioners, in their report, represent the said 16th section of thirty miles ready for present service, and completed and equipped as a first-class railroad, and that the telegraph line is completed for the same distance; and as the said company have paid to the said commissioners the per diem and mileage due them under the 21st section of the act of Congress approved July 27, 1866, on account of their examination of this section of road and telegraph line, I therefore respectfully
64 recommend the acceptance of the same, and the issuance to said

company of bonds and of patents for lands due on account of said section, agreeably to the act approved July 1st, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., and the acts amendatory thereof.

I am, sir, with great respect, your obedient servant,

O. H. BROWNING,
Secretary.

The PRESIDENT.

EXECUTIVE MANSION, *January* 25, 1868.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON.

DEPARTMENT OF THE INTERIOR,
Washington, May 15, 1868.

SIR: I have the honor to transmit herewith, for your action, the report, dated the 4th instant, of the commissioners, Mess'rs W'm M. White, Frank P. Blair, and N. B. Buford, appointed by you to examine and report upon the 17th section of twenty miles of the road and telegraph-line of the Union Pacific Railroad Company, commencing at the 540th and terminating at the 560th mile-post west from the initial point on the Missouri River, near Omaha, Nebraska.

The commissioners, in their report, represent the said 17th section of twenty miles ready for present service, and completed and equipped as a first-class railroad, and that the telegraph-line is completed for the same distance; and as the said company have paid to the said commissioners the per diem and mileage due them under the 21st section of the act of Congress approved July 27, 1866, on account of their examination of this section of road and telegraph-line, I therefore respectfully recommend the acceptance of the same, and the issue to said company of bonds and of patents for land due on account of said section, agreeably to the act approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph-line from the Missouri River to the Pacific Ocean," &c., and the acts amendatory thereof.

I am, sir, with great respect, your obedient servant,

O. H. BROWNING,
Secretary.

The PRESIDENT.

EXECUTIVE MANSION, *May* 15, 1868.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 16, 1868.

SIR: I have the honor to transmit herewith, for your action, the report, dated the 11th instant, of the commissioners, Mess'rs W'm M. White, Frank P. Blair, and N. B. Buford, appointed by you to
65 examine and report on the 18th section of twenty miles of the road and telegraph line of the Union Pacific Railroad Company,

commencing at the 560th and terminating at the 580th mile-post west from the initial point on the Missouri River, near Omaha, Nebraska.

The commissioners, in their report, represent the said 18th section of twenty miles ready for present service, and completed and equipped as a first-class railroad, and that the telegraph line is completed for the same distance; and as the said company have paid to the said commissioners the per diem and mileage due them under the 21st section of the act of Congress approved July 27, 1866, on account of their examination of this section of road and telegraph line, I therefore respectfully recommend the acceptance of the same, and the issue to said company of bonds and patents for lands due on account of said section, agreeably to the act approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., and the acts amendatory thereof.

I am, sir, with great respect, your obedient servant,

O. H. BROWNING,
Secretary.

The PRESIDENT.

EXECUTIVE MANSION, *May* 16, 1868.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., June 11, 1868.

SIR: I have the honor to transmit herewith, for your action, the report, dated the fifth instant, of the commissioners, Mess'rs W'm M. White, Frank P. Blair, and N. B. Buford, appointed by you to examine and report on the 19th section of twenty miles of the road and telegraph line of the Union Pacific Railroad Company, commencing at the 580th and terminating at the 600th mile-post west from the initial point on the Missouri River, near Omaha, Nebraska.

The commissioners, in their report, represent the said 19th section of twenty miles ready for present service, and completed and equipped as a first-class railroad, and that the telegraph line is completed for the same distance; and as the said company have paid to the said commissioners the per diem and mileage due them under the 21st section of the act of Congress approved July 27, 1866, on account of their examination of this section of road and telegraph line, I therefore respectfully recommend the acceptance of the same, and the issue to said company of bonds and patents for lands due on account of said section, agreeably to the act approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., and the acts amendatory thereof.

I am, sir, with great respect, your obedient servant.

O. H. BROWNING,
Secretary.

The PRESIDENT.

66 EXECUTIVE MANSION, *June* 12, 1868.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., June 15, 1868.

SIR: I have the honor to transmit herewith, for your action, the report, dated the ninth instant, of the commissioners, Mess'rs W'm M. White, Frank P. Blair, and N. B. Buford, appointed by you to examine and report on the 20th section of twenty miles of the road and telegraph line of the Union Pacific Railroad Company, commencing at the 600th and terminating at the 620th mile-post west from the initial point on the Missouri River, near Omaha, Nebraska.

The commissioners in their report represent the said 20th section of twenty miles ready for present service, and completed and equipped as a first-class railroad, and that the telegraph line is completed for the same distance; and as the said company have paid to the said commissioners the per diem and mileage due them under the 21st section of the act of Congress approved July 27, 1866, on account of their examination of this section of road and telegraph line, I therefore respectfully recommend the acceptance of the same, and the issue to said company of bonds and of patents for lands due on account of said section, agreeably to the act approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., and the acts amendatory thereof.

I am, sir, with great respect, your obedient servant,

O. H. BROWNING,
Secretary.

The PRESIDENT.

EXECUTIVE MANSION, *June* 16, 1868.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., July 20, 1868.

SIR: I have the honor to transmit herewith, for your action, the report, dated the fourteenth instant, of the commissioners, Mess'rs W'm M. White, Frank P. Blair, and N. B. Buford, appointed by you to examine and report on the 21st section of twenty miles of the road and telegraph line of the Union Pacific Railroad Company, commencing at the 620th and terminating at the 640th mile-post west from the initial point on the Missouri River, near Omaha, Nebraska.

The commissioners in their report represent the said 21st section of twenty miles ready for present service, and completed and equipped as a first-class railroad, and that the telegraph line is completed for the same distance; and as the said company have paid to the said
67 commissioners the per diem and mileage due them under the 21st section of the act of Congress approved July 27, 1866, on account of their examination of this section of road and telegraph line, I therefore respectfully recommend the acceptance of the same and the issue to said company of bonds and of patents for lands due on account of said section, agreeably to the act approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., and the acts amendatory thereof.

I am, sir, with great respect, your obedient servant,

O. H. BROWNING,
Secretary.

The PRESIDENT.

EXECUTIVE MANSION, *July* 21, 1868.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., July 23, 1868.

SIR: I have the honor to transmit herewith, for your action, the reports, dated the sixteenth and eighteenth inst., of the commissioners, Mess'rs W. M. White, F. P. Blair, and N. B. Buford, appointed by you to examine and report on the 22d and 23d sections of twenty miles each of the road and telegraph line of the Union Pacific Railroad Company, commencing at 640th and terminating at the 680th mile-post west of the initial point on the Missouri River, near Omaha, Nebraska.

The commissioners in their reports represent the said sections of forty miles ready for present service, and completed and equipped as a first-class railroad, and that the telegraph line is completed for the same distance; and as the said company have paid to the said commissioners the per diem and mileage due them under the 21st section of the act of Congress approved July 27, 1866, on account of their examination of these sections of road and telegraph line, I therefore respectfully recommend the acceptance of the same, and the issue to said company of bonds and of patents for lands due on account of said sections, agreeably to the act approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., and the acts amendatory thereof.

I am, sir, with great respect, your obedient servant,

O. H. BROWNING,
Secretary.

The PRESIDENT.

EXECUTIVE MANSION, *July* 23, 1868.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON.

DEPARTMENT OF THE INTERIOR.
Washington, D. C., August 8, 1868.

SIR: I have the honor to transmit herewith, for your action, the re-
*re*port, dated the twenty-ninth ultimo, of the commissioners,
68 Mess'rs W'm M. White, Frank P. Blair, and N. B. Buford, appointed by you to examine and report on the 24th section of twenty miles of the road and telegraph line of the Union Pacific Railroad Company, commencing at the 680th and terminating at the 700th mile-post west of the initial point on the Missouri River, near Omaha, Nebraska.

The commissioners, in their report, represent the said section of twenty miles ready for present service, and completed and equipped as a first-class railroad, and that the telegraph line is completed for the same distance; and as the said company have paid to the said commissioners the per diem and mileage due them under the 21st section of the act of Congress approved July 27, 1866, on account of their examination of this section of road and telegraph line, I therefore respectfully recommend the acceptance of the same, and the issue to said company of

bonds and of patents for lands due on account of said section, agreeably to the act approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., and the acts amendatory thereof.

I am, sir, with great respect, your obedient servant,

O. H. BROWNING,
Secretary.

The PRESIDENT.

EXECUTIVE MANSION, *August* 8, 1868.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., August 27, 1868.

SIR: Pursuant to the directions of M'r Secretary Browning, I have the honor to lay before you a copy of the letter which he addressed to you under date of the 19th inst., and also a copy of the report of the commissioners appointed to examine the twenty-fifth section of the Union Pacific Railroad, commencing at the 700th and terminating at 720th mile-post.

The original letter and report were submitted by you to the Attorney-General for his opinion upon certain questions of law arising thereon, and it is understood that they have not been returned. He has not furnished an opinion, but proposes to do so at a future period, and suggests that in the mean time "the same course should be taken upon the sections of the Union Pacific Railroad, now ready for the advance of the government subsidy, as has been heretofore taken."

Under these circumstances, it was deemed advisable to present the accompanying papers for your consideration, and for such order as you may be pleased to make in the premises.

I am, sir, with great respect, your obedient servant,

W. T. OTTO,
Acting Secretary.

To the PRESIDENT.

EXECUTIVE MANSION, *August* 27, 1868.

Upon a consideration of the letter of the Secretary of the Interior, and the report of the commissioners appointed to examine the twenty-fifth section of the Union Pacific Railroad and telegraph line, commencing at the 700th and terminating at the 720th mile-post, it appears
69 that said section of said railroad and telegraph line has been completed and equipped in all respects as required by the acts of Congress applicable thereto, and is hereby accepted.

ANDREW JOHNSON.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., September 4, 1868.

SIR: Pursuant to your oral direction of this morning, I have the honor to submit for your consideration the reports of the commissioners of the Union Pacific Railroad and telegraph line, on sections 26 and 27, extending from the 720th to the 760th mile-post west from the initial point of the road, near Omaha.

The commissioners, in their reports, represent the said sections of twenty miles each ready for present service, and completed and equipped as a first-class railroad, and that the telegraph line is completed for the same distance; and as the company have paid said commissioners the per diem and mileage due them under the twenty-first section of the act of July 27, 1866, on account of their examination of these sections of road and telegraph line, I therefore respectfully recommend the acceptance of the same, and the issue to said company of bonds and of patents for lands due on account of said sections, agreeably to the act approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., and the acts amendatory thereof.

I am, sir, with great respect, your obedient servant,

W. T. OTTO,
Acting Secretary.

The PRESIDENT.

EXECUTIVE MANSION, *September* 5, 1868.

The within recommendations of the Acting Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., September 22, 1868.

SIR: I have the honor to transmit herewith, for your action, the report, dated the 5th instant, of the commissioners, Mess'rs W'm M. White, Frank P. Blair, and N. B. Buford, appointed by you to examine and report on the twenty-eighth section of twenty miles of the road and telegraph line of the Union Pacific Railroad Company, commencing at the 760th and terminating at the 780th mile-post west of the initial point on the Missouri River, near Omaha, Nebraska.

The commissioners, in their report, represent the said section of twenty miles ready for present service, and completed and equipped as a first-class railroad, and that the telegraph line is completed for the same distance; and as the said company have paid to the said commissioners the per diem and mileage due them under the twenty-first section of the act of Congress approved July 27, 1866, on account of their examination of this section of road and telegraph line, I respectfully recommend the acceptance of the same, and the issue to said company of bonds and patents for lands due on account of said section, agreeably to the act approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., and the acts amendatory thereof.

I am, sir, with great respect, your obedient servant,

W. T. OTTO,
Acting Secretary.

The PRESIDENT.

EXECUTIVE MANSION, *September* 22, 1868.

The within recommendations of the Acting Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., October 20, 1868.

SIR: I have the honor to transmit herewith, for your action, the report, dated the 24th ultimo, of the commissioners, Mess'rs W'm M. White, Frank P. Blair, and N. B. Buford, appointed by you to examine and report upon the twenty-ninth section of twenty miles of the road and telegraph line of the Union Pacific Railroad Company, commencing at the 780th and terminating at the 800th mile-post west of the initial point on the Missouri River, near Omaha, Nebraska.

The commissioners, in their report, represent the said section of twenty miles ready for present service, and completed and equipped as a first-class railroad, and that the telegraph line is completed for the same distance; and as the said company have paid to the said commissioners the per diem and mileage due them under the twenty-first section of the act of Congress approved July 27, 1866, on account of their examination of this section of the road and telegraph line, I respectfully recommend the acceptance of the same, and the issue to said company of bonds and patents for lands due on account of said section, agreeably to the act approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., and the acts amendatory thereof.

I am, sir, very respectfully, your obedient servant,

O. H. BROWNING,
Secretary.

The PRESIDENT.

EXECUTIVE MANSION, *October* 21, 1868.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., November 19, 1868.

SIR: I have the honor to transmit herewith, for your action, the report, dated the 9th instant, of the commissioners, Mess'rs Frank P. Blair, N. B. Buford, and Cornelius Wendell, appointed by you to examine and report upon the thirtieth section of twenty miles of the road and telegraph line of the Union Pacific Railroad Company, commencing at the 800th and terminating at the 820th mile-post west of the initial point on the Missouri River, near Omaha, Nebraska.

71 The commissioners, in their report, represent the said section of twenty miles ready for present service, and completed and equipped as a first-class railroad, and that the telegraph line is completed for the same distance; and as the said company have paid to the said commissioners the per diem and mileage due them under the twenty-first section of the act of Congress approved July 27, 1866, on account of their examination of this section of road and telegraph line, I respectfully recommend the acceptance of the same, and the issue to said company of bonds and of patents for lands due on account of said section, agreeably to the act approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., and the acts amendatory thereof.

I am, sir, with great respect, your obedient servant,

O. H. BROWNING,
Secretary.

The PRESIDENT.

EXECUTIVE MANSION, *November* 19, 1868.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., December 4, 1868.

SIR: I have the honor to transmit herewith, for your action, the report, dated the 10th ultimo, of the commissioners, Mess'rs N. B. Buford, Frank P. Blair, and C. Wendell, appointed by you to examine and report upon the 31st section of forty miles of the road and telegraph line of the Union Pacific Railroad Company, commencing at the 820th and terminating at the 860th mile-post west of the initial point on the Missouri River, near Omaha, Nebraska.

The commissioners, in their report, represent the said section of forty miles ready for present service, and completed and equipped as a first-class railroad, and that the telegraph line is completed for the same distance; and as the said company have paid to the said commissioners the per diem and mileage due them under the 21st section of the act of Congress approved July 27, 1866, on account of their examination of this section of road and telegraph line, I therefore respectfully recommend the acceptance of the same, and the issue to said company of bonds and patents for lands due on account of said section, agreeably to the act approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., and the acts amendatory thereof.

I am, sir, with great respect, your obedient servant,

O. H. BROWNING,
Secretary.

[Endorsement.]

EXECUTIVE MANSION, *December* 5, 1868.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON.

72 DEPARTMENT OF THE INTERIOR,
Washington, D. C., December 9, 1868.

SIR: I have the honor to transmit herewith, for your action, the report, dated the 13th ultimo, of the commissioners, Mess'rs N. B. Buford, Frank P. Blair, and C. Wendell, appointed by you to examine and report upon the 32d section of twenty miles of the road and telegraph line of the Union Pacific Railroad Company, commencing at the 860th and terminating at the 880th mile-post west of the initial point on the Missouri River, near Omaha, Nebraska.

The commissioners, in their report, represent the said section of twenty miles ready for present service, and completed and equipped as a first-class railroad, and that the telegraph line is completed for the same distance; and as the said company have paid to the said commissioners the per diem and mileage due them under the 21st section of the act of Congress approved July 27, 1866, on account of their examination of this section of road and telegraph line, I respectfully recommend the

acceptance of the same, and the issue to said company of bonds and of patents for lands due on account of said section, agreeably to the act approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., and the acts amendatory thereof.

I am, sir, with great respect, your obedient servant,

O. H. BROWNING,
Secretary.

[Endorsement.]

EXECUTIVE MANSION, *December* 12, 1868.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., December 15, 1868.

SIR: I have the honor to transmit herewith, for your action, the report, dated the 14th ultimo, of the commissioners, Mess'rs Frank P. Blair, N. B. Buford, and C. Wendell, appointed by you to examine and report upon the 33d section of 20 miles of the road and telegraph line of the Union Pacific Railroad Company, commencing at the 880th and terminating on the 900th mile-post west of the initial point on the Missouri River, near Omaha, Nebraska.

The commissioners, in their report, represent the said section of twenty miles ready for present service, and completed and equipped as a first-class railroad, and that the telegraph line is completed for the same distance; and as the said company have paid to the said commissioners the per diem and mileage due them under the 21st section of the act of Congress approved July 27, 1866, on account of their examination of this section of road and telegraph line, I respectfully recommend the acceptance of the same, and the issue to said company of bonds and of patents for land due on account of said section, agreeably to the act approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., the acts amendatory thereof.

I am, sir, with great respect, your obedient servant,

O. H. BROWNING,
Secretary.

73 [Indorsement.]

EXECUTIVE MANSION, *December* 16, 1868.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Dec. 22, 1868.

SIR: I have the honor to transmit herewith, for your action, the report, dated November 20, 1868, of the commissioners, Mess'rs N. B. Buford, Frank P. Blair, and C. Wendell, appointed by you to examine and

report upon the thirty-fourth section of twenty miles of the road and telegraph line of the Union Pacific Railroad Company, commencing at the 900th and terminating at the 920th mile-post west of the initial point on the Missouri River, near Omaha, Nebraska.

The commissioners, in their report, represent the said section of twenty miles ready for present service, and completed and equipped as a first-class railroad, and that the telegraph line is completed for the same distance; and as the said company have paid to the said commissioners the per diem and mileage due them under the twenty-first section of the act of Congress approved July 27, 1866, on account of their examination of this section of road and telegraph line, I respectfully recommend the acceptance of the same, and the issue to said company of bonds and of patents for lands due on account of said section, agreeably to the act approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., and the acts amendatory thereof.

I am, sir, with great respect, your obedient servant,

O. H. BROWNING,
Secretary.

[Indorsement.]

EXECUTIVE MANSION, *December* 23, 1868.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., December 23, 1868.

SIR: I have the honor to transmit herewith, for your action, the report, dated the 7th instant, of the commissioners, Mess'rs N. B. Buford, Frank P. Blair, and C. Wendell, appointed by you to examine and report upon the thirty-fifth section of twenty miles of the road and telegraph line of the Union Pacific Railroad Company, commencing at the 920th and terminating at the 940th mile-post west of the initial point on the Missouri River, near Omaha, Nebraska.

The commissioners, in their report, represent the said section of twenty miles ready for present service, and completed and equipped as a first-class railroad, and that the telegraph line is completed for the same distance; and as the said company have paid to the said commissioners the
74 per diem and mileage due them under the twenty-first section of the act of Congress approved July 27, 1866, on account of their examination of this section of road and telegraph line, I respectfully recommend the acceptance of the same, and the issue to said company of bonds and of patents for lands due on account of said section, agreeably to the act approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., and the acts amendatory thereof.

I am, sir, with great respect, your obedient servant,

O. H. BROWNING,
Secretary.

[Indorsement.]

EXECUTIVE MANSION, *December* 23, 1868.

The within recommendations of the Secretary of the Interior are ap-

proved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., January 28, 1869.

SIR: I have the honor to transmit herewith, for your action, the report, dated the 20th instant, of the commissioners, Mess'rs N. B. Buford, Frank P. Blair, and C. Wendell, appointed by you to examine and report upon the thirty-sixth section of twenty miles of the road and telegraph line of the Union Pacific Railroad Company, commencing at the 940th and terminating at the 960th mile-post west of the initial point on the Missouri River, near Omaha, Nebraska.

The commissioners, in their report, represent the said section of twenty miles ready for present service, and completed and equipped as a first-class railroad, and that the telegraph line is completed for the same distance; and as the said company have paid to the said commissioners the per diem and mileage due them under the twenty-first section of the act of Congress approved July 27, 1866, on account of their examination of this section of road and telegraph line, I respectfully recommend the acceptance of the same, and the issue to said company of bonds and of patents for lands due on account of said section, agreeably to the act approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., and the acts amendatory thereof.

I am, sir, with great respect, your obedient servant,

O. H. BROWNING,
Secretary.

The PRESIDENT.

EXECUTIVE MANSION, *January* 28, 1869.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., February 9, 1869.

SIR: I have the honor to transmit herewith, for your action, the reports, dated the 27th and 29th ultimo, of the commissioners, Mess'rs N. B. Buford, Frank P. Blair, and C. Wendell, appointed by you to
75 examine and report upon the thirty-seventh and thirty-eighth sections of twenty miles each of the road and telegraph line of the Union Pacific Railroad Company, commencing at the 960th and terminating at the 1,000th mile-post west of the initial point on the Missouri River, near Omaha, Nebraska.

The commissioners, in their report, represent the said sections of forty miles ready for present service, and completed and equipped as a first-class railroad, and that the telegraph line is completed for the same distance; and as the said company have paid to the said commissioners the per diem and mileage due them under the twenty-first section of the act of Congress approved July 27, 1866, on account of their examination of these sections of road and telegraph line, I therefore respectfully recommend the acceptance of the same, and the issue to said company of bonds and of patents for lands due on account of said sections, agreeably to the

act approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c., and the acts amendatory thereof.

I am, sir, with great respect, your obedient servant,

O. H. BROWNING,
Secretary.

The PRESIDENT.

EXECUTIVE MANSION, *February* 9, 1869.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

ANDREW JOHNSON.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., July 15, 1869.

SIR: I have the honor to transmit herewith, for your action, five reports, dated the 9th ultimo, of the commissioners, Mess'rs Gouverneur K. Warren and James F. Wilson; also the report of Isaac N. Morris, the other commissioner, dated May 28, 1869, appointed by you to examine and report upon a section of $85\frac{88}{100}$ miles of the road and telegraph line, constructed by the Union Pacific Railroad Company, commencing on the road of said company at the 1,000th mile-post west from Omaha and terminating at the $1,085\frac{88}{100}$ mile-post.

The majority of said commissioners, in their report, represent the said section of $85\frac{88}{100}$ miles ready for present service, and completed and equipped as a first-class railroad, and that the telegraph line is completed for the same distance; and as the company have paid the per diem and mileage due them under the twenty-first section of the act of Congress approved July 27, 1866, on account of their examination of said section of road and telegraph line, I therefore respectfully recommend the acceptance of the same and the issue of bonds and of patents for lands due on account of said section, agreeably to the act approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes," and the acts amendatory thereof. Said bonds and patents to be issued to the Union Pacific Railroad Company on account of the work from said 1,000th mile-post to the "common terminus of the Union Pacific
76 and the Central Pacific railroads" "at or near Ogden"; and the bonds and patents on account of said work from said common terminus to Promontory Summit to be issued to such company as the proper authority, after full investigation of the respective claims of the Union Pacific Railroad Company and the Central Pacific Railroad Company of California shall determine to be thereunto lawfully entitled. Provided, however, That no bonds or patents shall in any event be issued until such security shall be deposited with the Secretary of the Treasury necessary to secure the ultimate completion of the road, agreeably to the acts mentioned in my letter to you of the 27th of May last.

I am, sir, very respectfully, your obedient servant,

J. D. COX, *Secretary.*

The PRESIDENT.

EXECUTIVE MANSION, *July* 15, 1869.

The within recommendations of the Secretary of the Interior are

approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect.

U. S. GRANT.

The following is the letter of the 27th of May, 1869, referred to in the last preceding letter of the Secretary of the Interior to the President:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 27, 1869.

SIR: I have the honor to transmit herewith, for your action, reports dated, respectively, February 10th and 27th, and March 15th, 1869, of the commissioners, Messrs. Thos. I. Henley, Frank Denver, and John Bigler, appointed by the President to examine and report on three sections of twenty miles each of the road and telegraph line of the Central Pacific Railroad Company of California, commencing at the termination of the 510th and ending at the termination of the 570th mile east of the initial point at Sacramento, in the State of California. Also a report, dated the 28th ultimo, of the commissioners, Messrs. James W. Haines, Frederick A. Tritle, and William Sherman, appointed by you to examine and report on one hundred (100) miles of road and telegraph of said company, commencing at the termination of said 570th and ending at the 670th mile east of said initial point.

The commissioners, in their report, represent the said sections of one hundred and sixty (160) miles ready for present service, and completed and equipped as a first-class railroad, and that the telegraph line is completed for the same distance; and as the said company have paid to said commissioners the per diem and mileage due them under the 21st section of the act of Congress approved July 27, 1866, on account of their examination of this portion of road and telegraph line, I respectfully recommend the acceptance of the same and that bonds be issued to the company thereon, in accordance with the agreement made with the company, which is to the effect that they deposit their first-mortgage bonds with the Secretary of the Treasury to such an amount as may be deemed necessary to secure the ultimate completion of the road, agreeably to the provisions of the act approved July 1st, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government
77 the use of the same for postal, military, and other purposes," and the acts amendatory thereof.

I am, sir, very respectfully, your obedient servant,

J. D. COX, *Secretary.*

The PRESIDENT.

This letter was returned bearing the following endorsement:

EXECUTIVE MANSION, *May* 27, 1869.

The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury is hereby directed to carry the same into effect.

U. S. GRANT.

V. As it appeared by the reports of some of the commissioners appointed by the President to examine and report upon sections of the road that the several sections of road were not and could not under the circumstances be fully completed up to the ultimate standard of a first-

class railroad, though they might be and actually were completed, section by section, so as to admit of transportation and travel over the same, the claimant, on the 12th of February, 1869, being thereto required by the Attorney-General of the United States, as a guarantee for the ultimate full completion and equipment of said road, executed the following papers, to wit:

DECLARATION AND AGREEMENT.

Know all men by these presents that the Union Pacific Railroad Company, having been heretofore required to deposit with the Government of the United States, in the Department of the Treasury of the United States, the amount in the aggregate of three millions of dollars ($3,000,000) of their first-mortgage bonds as a guarantee that the structure and equipment of the road of the said company shall be completed according to the provisions and requirements of law respecting the same, and to make such deposits from time to time as the said company shall receive the bonds of the United States, issued to it on the completion of successive sections of its road, as provided by law, to an amount equal to one-half of the amount of said bonds of the United States to be so received by said company, until the said sum of three millions of dollars in said bonds is so deposited:

Now, the said company, in pursuance of said requirement, hereby declares and agrees that the said first-mortgage bonds deposited or to be deposited with the Government of the United States, in the Treasury Department thereof, upon the requirement and in manner aforesaid, are, and may and shall be held by the Government of the United States, as security for the completion of the structure and equipment of the road of the said company, according to the provisions of the statutes of the United States providing for the building and completion of said road and its equipments, and to be so held until the President of the United States, on a proper examination of the actual completed road and equipments, shall be satisfied that the same are so completed as a first-class railroad according to law; such restoration of bonds to be made from time to time, pro rata, as the President, from the actual condition of the said road in its structure and equipments, shall deem it no longer necessary to retain the same.

And it is further declared and agreed by the said company,
78 that in case the President of the United States shall fail to be satisfied, upon a proper examination of the road, its structure and equipments aforesaid, that the same are conformed to the requirements of the statute providing for the building of the said road and for its structure and equipment, that it shall be the duty of the said company to proceed to complete the said road, its structure and equipments, according to the statutes aforesaid, and that in default of its so doing the said bonds shall be held by the said government, and shall be disposed of, and the proceeds thereof, if disposed of, applied to the proper completion of the said road, its structure and equipment, as the Government of the United States shall by law direct and provide.

In witness whereof the said Union Pacific Railroad Company has affixed its corporate seal to these presents, and directed the execution thereof to be attested by its president this twelfth day of February, A. D. eighteen hundred and sixty-nine.

OLIVER AMES,
President of Union Pacific Railroad Company.
HENRY B. HAMMOND,
Secretary of Union Pacific Railroad Company.

FEBRUARY 12, 1869.

Hon. O. H. BROWNING,
Secretary of the Interior:

SIR: The Union Pacific Railroad Company having been required by the Government of the United States, in addition to the deposit of three millions of dollars ($3,000,000) of first-mortgage bonds of the company with said government, in the Department of the Treasury thereof, as security for the due completion and equipment of its road; also, as a further security to the same end, to leave the lands given to the said company by the acts of Congress providing for the building of the said road, and the completion of its structure and equipments, without taking out patents for the same until the President shall be satisfied, upon proper examination of the road, its structure and equipments, that the same have been completed according to the provisions of law in the premises, in whole or in part, as hereinafter mentioned; and the company having executed the proper instrument in respect to the said required deposit with the Secretary of the Treasury:

Now, this is to declare that the said company assents to the aforesaid requirement in respect to the lands given to the said company as aforesaid; that is to say, the said lands shall remain without patents being taken out therefor until the President of the United States, upon a proper examination of the actual condition of the road of said company, its structure and equipments, shall be satisfied that the same have been completed according to law; but patents for said lands may be issued pro rata as parts of the said road and equipments from time to time shall be so found completed, if the President shall be satisfied so to direct.

In the name and by the authority of the said company this assent is given by us, the president and secretary of said company.

We have the honor to be, very respectfully, your obedient servants,

OLIVER AMES,
President of the Union Pacific Railroad Company.

HENRY B. HAMMOND,
Secretary of the Union Pacific Railroad Company.

VI. In pursuance of the "Declaration and Agreement" set forth in the next preceding finding, the claimant, on the 16th of February,
79 1869, deposited with the Treasurer of the United States its first-mortgage bonds to the amount of $1,600,000.

VII. On the 10th of May, 1869, the last rail of the claimant's road was laid, and about a week afterward the road was opened over its entire length to public use for the transportation of passengers and freight, and for the service of the government; and this service was from that time forward performed continuously.

VIII. Under the second section of the joint resolution of April 10, 1869, "for the protection of the interests of the United States in the Union Pacific Railroad Company, the Central Pacific Railroad Company, and for other purposes," a board of eminent citizens, five in number, was, in August, 1869, appointed by the President to perform the duty in said section prescribed, and they did perform the same; and on the 30th of October, 1869, they made to the Secretary of the Interior the following report:

WASHINGTON, D. C., *October* 30, 1869.

The undersigned, members of a commission for the examination of the Union and Central Pacific Railroads, appointed under a "Joint reso-

lution for the protection of the interests of the United States in the Union Pacific Railroad Company, the Central Pacific Railroad, and for other purposes," approved April 10, 1869, have the honor to submit the following report:

Under instructions from the Interior Department, dated August 14, 1869, four members of the commission were in Omaha on August 23; but the instructions of the fifth commissioner having failed to reach him he was not present, and it was informally decided to proceed to Sacramento. The commission met at Sacramento on September 8, all the members being present; organized by the election of General Hiram Walbridge, president, and General C. B. Comstock, secretary, and commenced the inspection of the Central Pacific Railroad, usually working from 6.30 a. m. till dark, and occupying from September 8 until September 14 in the inspection of that road. The inspection of the Union Pacific Railroad was begun September 14 and completed September 23, when the commission adjourned to meet at Washington, October 13, 1869, but the meeting was subsequently postponed until October 23, when most of the maps and information asked for from the two roads had been received.

The joint resolution under which the commission was appointed requires it "to examine and report upon the condition of, and what sum or sums, if any, will be required to complete each of said roads for the entire length thereof to said terminus, as a first-class railroad, in compliance with the several acts relating to said roads." The instructions of the Interior Department require that the "report should be minute and specific upon the several particulars relating to the construction and equipment of each of the roads, which those instructions set forth, and that it should state to what extent, if any, the line of either road deviates from the most central, direct, and practicable route mentioned in said acts of Congress."

The instructions add: "You will not, however, be restricted to these instructions, but will, in the spirit of the resolution, include in your report any suggestions or facts, relating to the roads, elicited by your examination, which you shall consider necessary to be submitted to the President of the United States."

The first question that comes before the commission is, What is meant by Congress, in its various acts relating to the Pacific railroads, by the words "first-class railroad"?

80 Railroads now ranked as first-class in this country were far from being perfect at their opening, and have been brought to their present high standard by large expenditures, which a small traffic in the beginning could never have justified. To require the Pacific railroads to be brought at first to the standard other roads have reached after years of heavy and lucrative business would be a waste of money. It is evident to the commission that this was not what Congress desired or intended in requiring a first-class railroad.

If private corporations had built these roads without governmental subsidy, it would undoubtedly have been for their interest to build them at first at the lowest cost consistent with keeping them in operation, and, when built, if a paying business should be developed, to have gradually made the improvements which increasing traffic should render necessary.

But Congress had made a large loan and an extensive land grant, a part of which will be valuable, and in return it required a better road than private interests would have built—a road that should be capable of transporting passengers and freight with rapidity, safety, and cer-

tainty; a road as good as the majority of those in the thickly settled States.

In the opinion of the commission, the requirements of the law will be satisfied, and the designs of Congress carried out, if the roads be properly located, with judicious grades; have substantial road-beds of good width; ballasting which, with proper care, shall be able to keep the track in good condition throughout the year; permanent structures for crossing streams, good cross-ties, iron and joint-fastenings; sufficient sidings, water-tanks, buildings, machinery, and adequate rolling-stock—the more important machine-shops and engine-houses being of masonry—and the commission is glad to be able to say, that, in its opinion, while some expenditures still need to be made, these two roads are substantially such roads to-day. The expenditures needed for completion will be given in detail for each road.

Report on Union Pacific Railroad, with estimate of cost for completion.

Location.—The location of the accepted line is highly creditable to the engineers of the company. There are fewer errors than might reasonably have been expected, considering the length of the road and the difficulties encountered, and none which, in our opinion, the government should require corrected. There are deviations from this accepted line at Promontory Mountains and at Uintah which should be corrected; and at Omaha the bridge line should be built to avoid the present heavy grade. The adoption of this line removes the necessity of reducing the grades on the present location, as heretofore required. An estimate of the cost of these changes is made.

Road-bed.—The road-bed is a large part of the way of proper width, both in cuts and embankments, though there are some places where greater width is needed on the embankments, for which an estimate is made.

Tunnels.—There are four short tunnels—three through solid rock not arched, and one arched with timbers. The commission have not deemed it necessary to provide for arching with masonry.

Bridges, trestles, and culverts.—Several of the high trestles between Blue Creek Station and Promontory ought to be filled up at once. They were evidently intended as temporary expedients, to gain time in opening the road. Below Echo two high trestles (on the nine hundred
81 and seventy-first mile), and the two of same character near Piedmont (on the nine hundred and thirty-fourth and nine hundred and thirty-sixth miles), should be filled within the coming year. The high trestle at Dale Creek is a good structure, and no estimate has been made for filling this, it being a first-class work of its kind.

The bridges are generally well built, and of good materials. There are, however, several of one hundred and one hundred and fifty feet span on Bitter Creek, where a water-way of forty feet would have been ample. The masonry of these is of an inferior character.

The company are now engaged in changing the course of the stream so as to render eight or ten of them unnecessary, and will fill the crossings with embankments. An estimate is made for completing those which are to remain.

Some of the Howe truss-bridges, like several of those on the Central road, are light in their suspension-rods for the maximum load of a train of locomotives. Several should be strengthened, for which estimates are made.

In reference to many of the trestles (not heretofore mentioned) and

culverts, which we have estimated for replacing, we would remark that practical railroad managers, having a due regard to economy, would not replace them by permanent structures so long as they are safe and reliable, which, in the opinion of the commission, will be four or five years for many of them, at the end of which time experience will point out the position and size of water-ways with much more certainty than can now be determined.

Snow-fences.—Some protection against snow has already been provided, and much more will be necessary. The officers of the road seem to be aware of the importance of these structures, and were engaged in preparing the material for them. It will undoubtedly be expedient to erect snow-sheds at some of the exposed points, but experience only can locate them properly. The saving in expense of operating and repairs will be so large that no railroad similarly situated can afford to be without them; we think, therefore, that it will be safe to leave all this part of the work in the hands of the company, to be done as fast as their experience shall point out the right places and the character of the structures to be built.

Track.—The track is generally very good, but a few miles were observed where the heavy traffic, near Omaha, had worn the rails considerably. To replace them is a matter of ordinary repairs, and not of construction, this part of the road having been in operation for four years. About four hundred and fifty miles of the track are laid with rails weighing fifty pounds per linear yard, and with wrought-iron chairs; the remainder is of fifty-six pounds and laid with fish-joints.

The cross-ties are generally of pine, of fair size and good quality, excepting those on about four hundred miles immediately west of Omaha, where originally a large proportion were of cottonwood. Many of these have been replaced with pine, oak, and cedar, but a large number are still in the track. A part of the cost of replacement belongs to the repairs of the road, but a portion should be borne by the construction account, as the cross-ties were originally inferior. One hundred thousand dollars above the ordinary repairs is estimated for their replacement, the company now having a large number on hand for that purpose. The cross-ties number from twenty-three hundred to twenty-six hundred and forty in each mile of track.

Sidings.—The sidings are ample for the business of the road, amounting to fully nine per cent. of its length.

82 *Ballast.*—A considerable portion of the road is well ballasted with good material; quite a large amount is, however, still needed, especially between Promontory and Ogden, and in the Platte Valley. For the latter, it can only be obtained by very long hauls; still we regard it so important as to justify us in estimating the expense of procuring it.

Station-houses and water-tanks.—The station-houses are of good character, properly located, and sufficient in number to accommodate the business of the road. The company have also erected, at convenient points on its line, several good hotels and eating-houses for the accommodation of passengers. There are some long intervals between water-tanks, but the commission is satisfied that all that is practicable is being done by the company to obtain an abundant supply of good water.

Coal.—The discovery of good coal in large quantities, easily accessible, at several points on the line of this road, is of great value in reducing the cost of operating.

Machine-shops and engine-houses.—At several places there are permanent machine-shops, well constructed and fully supplied with machinery

and tools. These are properly located. We have estimated for building one or more at the proposed junction of the two roads. The engine-houses are generally of stone or brick, and of sufficient size. There are three points at which others will be required, for which estimates are made.

Equipment.—There are upon the line of the road one hundred and forty-nine locomotive engines; twenty-six first-class and fifteen second-class passenger cars (besides sleeping cars in use upon the road, but not owned by the company); eighteen baggage, mail, and express cars; eighty-eight caboose cars, which can also be used for emigrant cars; nine hundred and fifteen box cars; eleven hundred and seven platform cars (besides three hundred leased to and used by other roads). There are three first-class passenger and two express and baggage cars in course of construction in the company's shops at Omaha. The freight cars are considerably in excess of the present and immediate future wants of the road. In view of the very large amount of material the company have on hand at Omaha, and their ample facilities for construction of passenger cars, we have made no estimate for additions to this class of equipment.

Telegraph lines.—The telegraph line and stations are sufficient for the present purposes, though many of the poles are not of the most durable material.

Estimates for supplying deficiencies, Union Pacific Railroad, Promontory to Ogden.

Ballasting track	$46,000
Widening embankments	6,400
Filling high trestles between one thousand and seventy-sixth and one thousand and eighty-fifth miles, inclusive	38,000
Abutments and piers at Bear River bridge, in addition to materials on hand and work done	5,000
Abutments, Ogden River bridge, in addition to work done and material on hand	4,000
Filling up and making permanent water-ways at forty-four short openings	20,000
Filling up and making permanent water-ways at three larger openings	1,200
83 Filling, putting in straining-beam bridges, and abutments at three large trestles	5,400
Correcting construction and reducing grades to conform to accepted location between one thousand and eightieth and one thousand and eighty-fifth miles, inclusive	80,000
Total	206,000

Estimate for supplying deficiencies, Union Pacific Railroad, Ogden to Omaha.

Ballasting track between Ogden and Echo	$5,000
Ballasting track between Echo and Bryan	70,000
Ballasting track between Bryan and Rawlins	90,000
Ballasting track between Rawlins and Laramie	86,000
Ballasting track between Laramie and Ogallalla	70,000
Ballasting track between Ogallalla and Omaha	116,500
Widening embankments between Ogden and Echo	3,600
Widening embankments between Echo and Bryan	31,500

	Widening embankments between Bryan and Rawlins	12,500
	Widening embankments between Rawlins and Laramie	6,000
	Widening embankments between Laramie and Ogallalla	7,000
	Widening embankments between Ogallalla and Columbus	18,000
	Widening embankments between Columbus and Omaha	9,000
	For freight and passenger depot at the proposed junction with Central Pacific Railroad	10,000
	For engine-house of brick or stone at said junction	40,000
	For machine-shops at said junction	50,000
	For engine-house at Green River, of brick or stone, in addition to materials already on hand	20,000
	For engine-house, of brick or stone, in the vicinity of Wasatch or Evanston	20,000
	For replacing cottonwood ties, in addition to repair account	100,000
	Strengthening Papilion bridge	500
	Widening pier and changing bridge at Crow Creek	1,000
	Rebuilding piers and abutments of Laramie	6,000
	For masonry and erecting bridge at the Little Laramie	3,000
	For improving abutments at Rock Creek	1,000
	For repairing masonry at Medicine Bow bridge	2,500
	Rebuilding and repairing masonry of Bitter Creek bridges	21,000
	For abutments and piers at Green River	15,000
	For widening pier at last crossing Black's Fork	1,000
	Piers and abutments at Black's Fork, eight hundred and seventy-third mile	3,500
	Piers and abutments at Black's Fork, eight hundred and eightieth mile	12,000
	Masonry at crossing Big Muddy, eight hundred and ninetieth mile	7,500
	Masonry at crossing Big Muddy, eight hundred and ninety-first mile	5,500
	Masonry for four straining-beam bridges between nine hundred and forty-sixth and nine hundred and forty-ninth miles, including filling trestles	15,000
	For abutments for six 40-feet straining-beam bridges on nine hundred and eighty-fifth to nine hundred and eighty-eighth miles, inclusive	2,400
	Arch culvert	500
84	Filling trestle at Weber River bridge	3,000
	Filling and replacing with permanent water-ways thirty-five small openings of trestle-work between Ogden and Yellow Creek	14,000
	Filling and replacing with permanent water-ways ten larger openings between Ogden and Yellow Creek	11,000
	Filling two high trestles on nine hundred and seventy-third mile	12,000
	Filling two high trestles on nine hundred and seventy-first mile	32,500
	Filling trestle on nine hundred and seventieth mile	2,000
	Filling two trestles on Yellow Creek	2,200
	For abutments, filling, and putting in straining-beam bridges at nine hundred and sixtieth and nine hundred and seventy-sixth miles	2,500
	For filling and replacing with permanent water-ways ten small openings of trestle-work between Yellow Creek and Piedmont	2,000

Filling trestle at nine hundred and sixty-eighth mile	500
For abutments, straining-beam bridge, and filling at nine hundred and fifty-sixth mile	1,500
For filling four large trestles between nine hundred and forty-fifth and nine hundred and thirty-fourth miles, inclusive	33,500
For filling and replacing with permanent water-ways seventeen small openings between Piedmont and Bryan	7,000
Abutments at crossing Big Muddy, nine hundred and twenty-seventh mile	9,000
Abutments at crossing Big Muddy, nine hundred and twenty-third mile	3,000
For abutments, bridging, and filling eighteen trestles between Piedmont and Bryan, chiefly over the Muddy	32,600
For filling and putting in three culverts between Piedmont and Bryan	3,700
For filling and replacing with permanent water-ways forty small openings of trestle-work between Bryan and Rawlins	16,000
Filling and replacing with permanent water-ways twenty larger openings between Bryan and Rawlins	20,000
Filling and replacing with permanent water-ways sixty small openings of trestle-work between Rawlings and Laramie	24,000
Filling and replacing with permanent water-ways seventeen larger openings of trestle-work between Rawlins and Laramie	17,000
Filling three other large trestles and putting in culverts between Rawlins and Laramie	25,000
Filling and replacing with permanent water-ways one hundred and twenty-five small openings of trestle-work between Laramie and Ogallalla	50,000
Filling and replacing with permanent water-ways thirty-seven larger openings of trestle-work between Laramie and Ogallalla	59,600
Filling eighteen other large trestles between Laramie and Ogallalla	50,000
85 For filling and replacing with permanent water-ways one hundred and fifty small openings between Ogallalla and Omaha	30,000
For filling and replacing with permanent water-ways twenty-five larger openings of trestle-work between Ogallalla and Omaha	20,000
To change line to original location at Uintah	5,000
To reduce grade or change line near Omaha	60,000
Total, Promontory to Omaha	1,586,100

Surplus material and supplies.—After examining the list of rolling-stock, material, and supplies on hand, submitted by the company, and making a liberal allowance for the immediate future wants of the road, we find they have a surplus amounting to about $1,800,000 in value.

In Appendix B will be found a list of the maps, papers, and statements submitted by this company.

In concluding this report, the commission desire to state that both the companies are doing a large amount of work on their respective

roads, and are day by day bringing them nearer to the standard required by law.

This great line, the value of which to the country is inestimable, and in which every citizen should feel a pride, has been built in about half the time allowed by Congress, and is now a good and reliable means of communication between Omaha and Sacramento, well equipped, and fully prepared to carry passengers and freight with safety and dispatch, comparing in this respect favorably with a majority of the first-class roads in the United States.

Respectfully submitted.

HIRAM WALBRIDGE,
S. M. FELTON,
C. B. COMSTOCK,
E. F. WINSLOW,
J. F. BOYD,
Commissioners.

Hon. J. D. COX,
Secretary of the Interior.

IX. On the 3d of November, 1869, the Secretary of the Interior addressed to the Commissioner of the General Land Office the following communication:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., November 3, 1869.

SIR: The commission to examine the Union Pacific and Central Pacific Railroads have reported, and its report being accepted and made the basis of an adjustment of the accounts between the United States and said railroad companies, you are hereby authorized to commence the patenting of lands to such companies, under grants made by Congress, as follows:

In addition to the bonds retained by the United States as security for the completion of said roads in the matters reported deficient or not up to standard by said commission, one-half of the lands ready for patenting to the Union Pacific Company will have patents suspended until further directions from this department.

86 The other half may be patented to said company as fast as surveys and other preliminaries are completed; that is to say, beginning at Omaha and working westward, the odd-numbered sections 1, 5, 9, etc., will be patented first to the company (there being no valid adverse claim found), and sections 3, 7, etc., withheld until further directions, as above stated.

Patents to the Central Pacific may in like manner issue, beginning at Sacramento and working westward.

It is my desire that the work be so systematized that it may be pushed forward as rapidly as possible.

Very respectfully, your obedient servant,

J. D. COX,
Secretary.

Hon. JOS. S. WILSON,
Commissioner General Land Office.

X. Up to the 6th of November, 1869, the point at which the Union Pacific Railroad and the Central Pacific Railroad should meet was not settled; but assuming that the former road would go no farther west

than Ogden, 1,033.68 miles west of Omaha, the Secretary of the Treasury, on that day, ordered that bonds of the United States, at the rate of $32,000 per mile for the distance of 13.68 miles, from the 1,020th mile-post to Ogden, should be issued, but ordered that the Register of the Treasury should hold $323,488 thereof as security for the overissue of first-mortgage bonds by the claimant, and deliver the balance of $114,272 to the claimant. In reference to the issue of the bonds for said 13.68 miles, the Secretary of the Treasury wrote the following letter and endorsed thereon the order subjoined thereto:

TREASURY DEPARTMENT, *November* 6, 1869.

SIR: I have this day approved the report of the Assistant Solicitor of the Treasury, dated July 21, 1869, in which he states that the Union Pacific Railroad Company is entitled to United States bonds to the amount of six hundred and forty thousand (640,000) dollars, being at the rate of $32,000 per mile upon the fortieth (40) section of the railroad and telegraph line of said company, commencing at the 1020th and terminating at the 1040th mile-post west from the initial point, near Omaha, Neb.

This report is referred to you for action under the following instructions: It is understood that the Union Pacific Railroad Company has issued first-mortgage bonds in excess of its legal right to issue such bonds if their road terminates at or near Ogden, and as at present advised you are instructed to act as though the road terminated at Ogden. You will therefore ascertain the amount of such excess. If that excess does not exceed the amount of first-mortgage bonds now in possession of the government, you may issue subsidy bonds under the said report of the Assistant Solicitor of the Treasury, from the terminus of the 39th section west from Omaha to Ogden, which is understood to be about fourteen (14) miles. If, after deducting the amount of first-mortgage bonds held by the government from the excess of issues, there is still a deficit, you will subtract the deficit from the amount of bonds which would otherwise be due to said railroad upon that portion of the 40th section which is east of Ogden, and issue subsidy-bonds for the
87 remainder upon receiving proper evidence from the attorney or agent of the railroad of his right to receive the same.

Very respectfully,

GEO. S. BOUTWELL,
Secretary.

To J. P. BIGELOW,
Loan Division, Treasury Department.

TREASURY DEPARTMENT, *November* 6, 1869.

Let there be issued on this letter, to the Union Pacific Railroad Company, $137,760, being for a section of 13 $\frac{68}{100}$ miles, at $32,000 per mile, commencing at the 1020th mile-post and terminating at Ogden. Of the above amount the Register will hold $323,488, as security for the overissue of first-mortgage bonds of the road, delivering the balance, $114,272, to the attorney of the company.

GEO. S. BOUTWELL,
Secretary.

Afterwards, by arrangement between the said two railroads, the place of junction was fixed at a point 5 miles west of Ogden; and thereby the claimant became entitled to bonds of the United States at the rate of $32,000 per mile for 5 miles from Ogden to the point of junction, and

the same were issued to the claimant soon after the 14th of July, 1870.

The bonds so issued for said 5 miles were the last that the claimant was entitled to receive from the United States on account of the construction of said road, and they made an aggregate of $27,235,760 of bonds of the United States received by the claimant on that account.

All the subsidy bonds mentioned in this finding bore interest from the 16th of July, 1869.

XI. Before the place of junction of said two roads was fixed at a point 5 miles west of Ogden, as stated in the last preceding finding, the claimant and the Central Pacific Railroad Company had agreed that the two roads should meet at some point within 8 miles west of Ogden; that claimant should build the road to Promontory Point, about 53 miles west of Ogden; and that the Central Pacific Railroad Company should pay the cost of the same; and that the claimant should draw the United States bonds to the terminus near Ogden, and the Central Pacific Company should draw the balance.

On the 6th of November, 1869, the claimant had issued $29,000,000 of first-mortgage bonds, on the basis of its completion of the road to Promontory Point; but owing to the fixing of the terminus of the claimant's road at the point 5 miles west of Ogden, that amount was $1,763,000 more than the claimant was lawfully entitled to issue. The aforesaid 1,600 first-mortgage bonds which had been deposited as security for the completion of the road were not held by the Secretary of the Treasury after the 6th of November, 1869 as security for that purpose, but were held by him from and after that date, and until they were surrendered cancelled, as hereinafter stated, an account of said overissue; and in addition thereto, on the 5th of January, 1870, the claimant deposited with the government 163 other of its first-mortgage bonds, also
88 on account of said overissue; and on the said 7th of January, 1870, the Secretary of the Treasury delivered the said 163 bonds to the Treasurer of the United States, and directed him to hold the same, and also the said 1,600 bonds (which had been previously delivered to said Treasurer), on account of said overissue.

The said 1,763 bonds remained in the hands of the said Treasurer until the 10th of August, 1870, when, by order of the Secretary of the Treasury, they were all canceled, and returned in a canceled condition to the claimant, whose treasurer receipted for the same on the 24th of October, 1870, and by said cancellation the said overissue was canceled.

XII. The suspension of patents for one-half of the lands ready for patenting to the claimant, which was ordered by the Secretary of the Interior in his letter of November 3, 1869, set forth in finding IX continued in force for more than five years after the same was ordered. In relation to that suspension the Secretary of the Interior wrote the following letter to the acting president of the claimant:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., February 9, 1874.

SIR: I have considered your letter of the *the* 3d ultimo, in relation to the withholding from your company of patents for half the lands granted them by the acts of 1st July, 1862, and 2d July, 1864.

The order directing such withholding was issued by M'r Secretary Cox, on the 3d November, 1869. It was based on the report of the five "eminent citizens," authorized by the joint resolution of 10th April, 1869; and the patents were to be withheld as security for the completion

of your company's road in the matters reported deficient, or not up to the standard.

During the four years that have elapsed since the issuing of said order, repeated applications have, as you state, been made to me for its rescinding or modification; applications which my sense of official duty has not permitted me to grant.

Two examinations of the condition of the road have, of their own motion, been made by a portion of the government directors of your company, who have submitted reports thereof to the department; but no examination has been made, at the instance of the department, to ascertain whether the defects reported by the "eminent citizens" have been supplied. In the absence of legislation, directing such re-examination, it remains for the company to decide whether they will make application to the President for the appointment of commissioners for that purpose; and so I have more than once informed the agents of the company who urged the repeal of M'r Secretary Cox's order.

I can only repeat to you what has been said to them, that until this re-examination be made, the order will not be disturbed.

Very respectfully, &c.,

C. DELANO,
Secretary.

JOHN DUFF, Esq.,
Vice-President and Acting President of Company,
Office Morton, Bliss & Co., New York City, N. Y.

XIII. The president of the claimant having applied for a re-examination of its said road to determine whether it had been completed according to law, the Secretary of the Interior appointed three persons
89 to make such re-examination, and the following is the letter of their appointment:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 14, 1874.

SIRS: On the 30th October, 1869, "five eminent citizens," who were appointed commissioners by the President under joint resolution of 10th April, 1869, reported certain deficiencies in the construction of the Union Pacific Railroad.

The president of the company that constructed said road applied on the 8th instant for its re-examination, to determine whether it has been completed as required by law and the report of said commissioners; you are hereby appointed commissioners to make such examination and report to this department.

To aid and guide you in the examination, a printed copy of the report of the "eminent citizens" is inclosed herewith, and also a printed copy of the instructions to commissioners who are appointed to examine land-grant railroads.

It will be your duty to examine said road with special reference to the deficiencies above referred to, and to report whether they have been supplied. If they have been, and the road is completed as required by law and departmental instructions, you will ascertain, as near as practicable, and report the date of such completion.

You will report whether the company have shown a disposition to act in good faith in supplying such deficiencies, give full and exact information as to the present condition of the road, and if it be not yet completed, state what is, in your judgment, necessary to such completion.

The 21st section of the act of 27th July, 1866 (14 Statutes, 299), fixes your compensation at $10 per day for each day actually and necessarily employed, and ten cents per mile for each mile actually and necessarily traveled in discharging the duties required of you, which per diem and mileage shall be in full compensation for your services, and must be paid by the company.

You will proceed to such examination when notified so to do by the president of said company.

Very respectfully, your obedient servant,

B. R. COWEN,
Acting Secretary.

XIV. The commissioners so appointed made to the Secretary of the Interior the following report:

SALT LAKE CITY, UTAH,
October 7, 1874.

To the Hon. the SECRETARY OF THE INTERIOR,
Washington, D. C.:

The undersigned, commissioners to examine and report whether the deficiencies in the construction of the Union Pacific Railroad, as reported by the commission appointed under act of Congress, approved April 10, 1869, have been supplied and the road completed, as required by said report, submit the following:

The examination was commenced on the 25th September, and completed October 5, and has been made thoroughly and in detail. We find that the report of the commission of eminent citizens was made
90 soon after the joining of the rails at Promontory, and before they or the company had the experience required to determine what material in the peculiar climate of this country was actually necessary to bring the road up to the standard required by law. This embarrassment was felt by that commission, and is referred to in their report.

In most cases the expenditures of the company in the items reported by the former commissioners have far exceeded their estimate.

The present commission has found it, at this late day, impossible to ascertain whether or not the exact amounts advised by the commission of eminent citizens have in all cases been expended in the precise localities indicated, particularly as regards the improving of water-ways.

Many of these have been changed in size and location; others have been entirely filled up. They have, therefore, been compelled to take the expenditures somewhat in bulk, and find the comparison as follows

Comparative statement of estimates for supplying deficiency in construction account and actual expenditure, from October 1, 1869, to September 1, 1874.

	Estimated deficiency, per report of commissioners.	Actual expenditure of Union Pacific Railroad Company, per statement attached.	Deficiency.	Excess.
ROAD AND TRACK.				
Ballasting and widening road-bed	$529,100 00	$531,661 00	.....	$2,561 00
Reducing grades at Omaha	60,000 00	88,397 57	.....	28,397 57
Shops and fixtures	130,000 00	268,485 41	.....	138,485 41
Station buildings	10,000 00	552,260 90	.....	542,260 90
Tenement buildings	.....	38,965 45	.....	38,965 45
BRIDGING.				
Filling trestles, replacing bridges with masonry, &c	551,000 00	553,000 00	.....	2,000 00
Snow-sheds and fencing	.....	393,978 14	.....	393,978 14
Fencing ordinary	.....	75,779 23	.....	75,779 23
Ties	100,000 00	1,013,646 93	.....	913,646 93
Telegraph	.....	79,901 16	.....	79,901 16
Total	1,380,100 00	3,596,075 79	.....	2,215,975 79
Deduct deficiency estimated by commissioner	.....	1,380,100 00		
Excess of actual expenditures over estimate	.....	.....	.....	2,215,975 79

When amounts and location have been designated, the company have faithfully complied with the recommendation of the former commission, in almost all cases expending larger sums than advised by said commission, the only exception worthy of note being the machine-shops recommended at the junction, which have been built at Evanston, in Wyoming Territory, because of the failure of the two companies to obtain property at the junction until a very recent date.

Experience has demonstrated the Evanston location to be a much more desirable, it being on the top of the maximum grade, and at the coal-mines of the company. These shops are built at a cost of more than three times the estimate for the junction.

Besides the expenditures shown in this statement, the company have paid out large sums in new constructions, maintenance of way, and in additional facilities for accommodating and handling economically the traffic of the road, showing not only that they have acted in good faith in supplying the deficiencies reported by the former commission,
91 but their determination is to make and maintain it in all respects a first-class road.

In accordance with your instructions, "to give full and exact information as to the present condition of the road," we submit the following detailed statement:

Location.—The location of the road shows a thorough knowledge of the features of the country; its directness, its greater percentage of tangent over curved line (length of tangents being 887.45 miles and of curved lines 148.54 miles); its light grade and curvature (the maximum grade being 90 feet per mile, and its sharpest curve six degrees) make it an excellent road to operate and maintain with a minimum expense.

The deviation of the road from the accepted line at Uintah has been corrected. The 66-foot grade at Omaha has been reduced to a 30-foot grade, and the material taken out and used in the approaches to the bridge over the Missouri River.

Missouri River bridge.—A Post's patent truss-bridge resting on iron tubular columns, sunk in the sand from 50 to 80 feet, has been built across the Missouri River at Omaha. The lower chord of the truss is 50 feet above high water, and 70 feet above low water. The bridge proper is 2,750 feet in length, and the approaches about three miles in length.

The structure has been erected at a cost of $2,500,000. By it the Union Pacific Railroad Company can make its connection with the roads coming from the east, north, and south.

Road-bed.—The road-bed in bank is 14 to 16 feet in width. Large expenditures have been made in widening banks, taking out cuts, and in raising some two hundred miles of track from two to five feet, by which the company is relieved of a large expense in sustaining snow-sheds and fences. The company is using three steam-shovels on the work, and in three years expect to avoid the use of snow-sheds and retain only a very limited amount of snow-fences.

In the opinion of this commission, this action of the company will successfully relieve them from snow-blockades and the large expenditure attending that embarrassment.

Tunnels.—There are four short tunnels, one of which is arched, and all are in good condition.

Bridges, trestles, and culverts.—All the trestles in the road have been filled, in accordance with the recommendation of the former commission, the last having been completed in September, 1874. Stone piers and abutments have been substituted for the piles and trestle piers.

Several of the bridges on Bitter Creek have been dispensed with by changing the channel of that stream.

All the truss bridges appear to be sound, strong, and capable of sustaining any traffic over them, additional rods having been inserted to comply with the recommendation of the former commission.

The wooden truss bridges are renewed by combination of wood and iron, and many of the smaller trestles and culverts have been replaced, when the water-way allowed, by stone culverts, and by piles, bridges, and trestles on pile foundations, and in the opinion of the commission, the very material improvement upon the bridges, the filling of trestles and replacing piers with masonary, makes these structures substantial and permanent.

Snow-fences.—Since 1869 two hundred and sixty-nine miles of snow-fences and six miles of snow-sheds have been constructed, so that for two years no delay on account of snow has occurred.

During the last two years the company has abandoned a large amount of snow-fences by raising tracks and widening outcuts, as here-
92 tofore stated, and are proceeding during the spring, summer, and fall months, when earth can be economically moved, to release these structures. They evidently see that a permanent relief in this way, though costing more than the fencing and sheds, is true economy in the end.

Track.—The track throughout is in excellent condition. Taking into consideration the material, we doubt if there is a road of its length in the country that can excel it. The iron is in good repair.

The chain-joints are being rapidly replaced by fish-plates. About seventy miles of new rails are laid annually. At Laramie, near the centre of the road, the company is erecting extensive rolling-mills to re-roll their own rails, which will no doubt inaugurate an extensive iron business throughout the entire coal and iron districts.

Cross-ties are pine and oak.—Since 1869, 2,000,000 new ties have been

placed on the track. There are now on hand ready for use 400,000 more. All cottonwood ties have been replaced by pine and oak, and the condition of the track also shows that the road is well and fully tied, averaging fully 3,000 ties to the mile. On this item the company has expended since 1869, as we are informed by the auditor, $1,013,646.93.

Sidings.—The sidings on the road are ample, far exceeding the demand of the present business. They occur on an average every six miles, and since 1869 the capacity of the road in this particular has been doubled.

Ballast.—The road has been ballasted throughout with sand, gravel, or rock, and at many points ballast has been hauled long distances.

Often the soil of the country throughout which the road runs has been found from experience to make excellent ballast, and in such cases has been used freely.

Station-houses.—The station and freight houses are of good quality and ample in size, properly located, and sufficient in number and capacity to accommodate the natural and probable increase of business of the road for many years.

At Fremont, Grand Island, North Platte, Sidney, Cheyenne, Laramie, Rawlins, Green River, Evanston, and Ogden the company has erected, or caused to be built, large and commodious hotels and eating-houses, giving ample accommodations to the traveling public.

Tanks and water-supply.—The water-tanks average twelve miles apart, and are generally of 60,000 gallons capacity, supplied in all cases by overhead flow and pumps worked by steam-power or windmills.

The additions made since 1869 make the supply ample. Through the dry country, from Rawlins to Green River, seven artesian wells, averaging 700 to 1,400 feet deep, have been sunk, giving a good supply of water, and, in two cases, flowing wells.

Coal.—Coal exists along the line of the road from Laramie to Echo, the veins varying from three to thirty feet in thickness.

Within the past year the company have taken charge of their coal mines, and, by delivering coal in large quantities, propose to make the cost to consumers much less than it has been heretofore. The Central Pacific Railroad is also obtaining coal from mines along this line.

Machine-shops are ample, their capacity being more than double the present requirements of the company.

The company estimates that the shops are sufficient to maintain double the amount of rolling-stock now in use. These shops are generally built of brick and stone, and are located at Omaha, North Platte, Cheyenne, Laramie, Rawlins, Green River, and Evanston. At the latter place
93 the shops built were intended for the junction of the two roads, but the company preferred to make a short division, that could be doubled, and have the shops near their coal.

At the points named, it was supposed ample reservations were made in the right of way for the accommodation of the shops, and, generally, 1,000 feet was reserved for the shops, out-buildings, and tracks.

This commission is satisfied, from a personal examination of the ground, that this is no more than sufficient, and, at some points, are in doubt as to its being sufficient for the growing business of the road.

These reservations, we are informed, were made at all points except Omaha, before the government surveys were made, and since the completing of these surveys additional reservations have been made when the shops have been found to be located on the land of the company.

This commission desires to call the attention of the department to the fact that when any portion of the reservation has fallen upon the

even-numbered government sections, parties have attempted to preempt the ground upon which the shops stand.

The attention of the commissioners was called to this fact at Cheyenne, at Laramie, and at Evanston; and they consider it would be a great detriment to the company and the government to have their reservations curtailed, as they are not more than sufficient for the accommodation of the present and future business of the road.

If the charter of the company gives them authority to make their reservation for right of way, shops, etc., this commission is of opinion that a prompt decision in these cases will avoid complications and relieve the company of a great source of annoyance.

Round-houses are more than sufficient to house the machinery of the road not in use. They are all well built, of brick and stone, and are located at Omaha, Grand Island, North Platte, Sidney, Cheyenne, Sherman, Laramie, Medicine Bow, Bitter Creek, Green River, and Evanston. At two of these points they are not needed and not used.

Rolling stock.—There are now on the road 152 locomotives; 25 first-class coaches; 31 second-class coaches; 1 directors' car; 1 officer car; 1 paymasters' car; 8 emigrant cars; 9 mail-cars; 9 extra cars; 12 baggage cars, large; 6 baggage-cars, small; 78 way-cars; 3 wrecking cars and cabooses; 4 outfit-cars; 325 hand-cars; 75 rubble cars; 47 dump-cars; 1,230 box-cars; 947 flat cars; 550 coal-cars; 2 iron cars; 12 fruit-cars; 114 stock-cars.

At the car-shops they have ample facilities to manufacture cars of all kinds as fast as required, and have on hand a good supply of proper material for the purpose.

There are also eight locomotives under contract at the Taunton works, Massachusetts, to be delivered before the spring of 1875. The equipment is first-class, and fully up to the present requirement of the road.

In compliance with the following paragraph of your instructions, "If the road is completed as required by law and departmental instructions, you will ascertain as near as practicable and report the date of such completion," this commission has endeavored to ascertain as accurately as possible the time at which the deficiencies reported by the former commission were supplied.

From personal examination, and from the data furnished by the company, we find that the expenditure required by the former commission in finishing bridges in replacing the high trestles by filling with earth, &c., were finally completed in the month of September, 1874.

This commission has, therefore, decided that the road was completed as required by law, by the report of the former commission, and
94 to comply with the instructions of the Interior Department, October 1, 1874, at a total cost of $115,214,587.79, as shown by the books of the company.

Conclusion.—We consider the road as built a first-class railroad, fully complying with its charter and with the requirements of the law, and in accordance with the instructions of the department furnished to us.

The shops and round-houses are of brick and stone; its machinery all of the latest and most approved patterns; its locomotives and rolling-stock ample, and in excellent condition.

Its passenger trains are well appointed and first-class, giving ample accommodation to the traveler.

Its structures are fast becoming permanent, iron being substituted for wood and stone, and, if the present policy of the road is continued, it will be but a short time before the maintenance of road-bed will be reduced to a minimum.

Its cheap fuel, and the effort being made by the company to develop the resources of the country through which it runs, will develop the local travel and traffic, and add largely to its tonnage and earnings.

The condition of the road, its order, discipline, and the evident close attention to details, not only show ability on the part of the general officers, but reflect great credit upon its local management, its superintendent, and assistants.

Every facility for carrying out our instructions was furnished by the company.

We have found no necessity for making use of the supplemental instructions of September 10, as in all cases where the use of brick or stone has been desirable, that material has been used.

Respectfully submitted.

JAMES MOORE,
IRA L. MERRIAM,
J. S. DELANO,
Commissioners.

XV. The Secretary of the Interior made the following report to the President of the United States, who made thereon the indorsement subjoined thereto:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., November 12, 1874.

SIR: Joint resolution approved 10th April, 1869 (16 Stat., 56), authorized you to appoint a board of eminent citizens to examine and report upon the condition of the Union Pacific Railroad and the Central Pacific Railroad, and what sums would be required to complete them as first-class railroads.

The board were appointed, discharged the duties assigned them, and made their report (printed copy herewith), in which they estimated that over $2,000,000 would be required to supply the deficiencies in both roads, of which $576,650 would be required to complete the Central Pacific Road.

On the 3d of November, 1869, Mr. Secretary Cox directed the Commissioner of the General Land Office to withhold from the companies that constructed said roads one-half of the lands inuring to them under acts of Congress, as a security for the supply of said deficiencies.

On the 21st of September last this department appointed three commissioners to re-examine the Central Pacific Railroad, and report whether said deficiencies had been supplied and the road completed, as required by law and departmental instructions.

95 I have the honor to submit herewith their report, under the date of the 2d instant. They state that $4,544,387.23 have been expended on said road in excess of the sum estimated by said eminent citizens as necessary to supply the deficiencies, and express the opinion that the road is now completed as a first-class railroad, as required by law and the instructions of the department.

Regarding the order of Mr. Secretary Cox of the 3d of November, 1869, as a conditional acceptance of said road, and finding that the conditions have since been amply and fully complied with, I respectfully recommend that the Secretary of the Interior be authorized to issue patents to the company for the lands inuring to it, and that said order withholding them be revoked.

I am, sir, very respectfully,

C. DELANO,
Secretary.

To the PRESIDENT.

EXECUTIVE MANSION,
November 14, 1874.

The within recommendations are hereby approved. The authority asked for is conferred, and the order of November 3, 1869, is revoked.

U. S. GRANT.

XVI. After the President of the United States approved the letter of the Secretary of the Interior, set forth in the next preceding finding, the Secretary addressed the following letter to the Commissioner of the General Land Office:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., 18th November, 1874.

SIR: Under joint resolution approved 10th April, 1869 (16 Stat., 56), a board of eminent citizens was appointed to examine and report upon the condition of the Union Pacific Railroad and the Central Pacific Railroad, and what sums would be required to complete them as first-class railroads.

On the 30th of October, 1869, said eminent citizens made their report to this department; they approved the location of the roads and their general construction, and submitted an estimate of the sums necessary for supplying the various deficiencies, enumerated in detail.

On the 3d of November, 1869, the Hon. J. D. Cox, then Secretary of the Interior, accepted said report and made it the basis of an adjustment of the land grant to the companies that had constructed said roads. He directed your predecessor to suspend the issue of patents for one-half the lands inuring to said companies until further directions from the department, and to issue patents for the other half as fast as surveys and other preliminaries should be completed.

Commissioners appointed within the current year have re-examined said roads, and reported said deficiencies to have been supplied, and the road completed as required by report of said eminent citizens. They also state that the Union Pacific Company have expended on their road $2,215,975, and the Central Pacific Company, on their road, $4,544,387.23 more than the sum estimated by said eminent citizens as necessary to be expended in supplying said deficiencies. They express the opinion that *that* the roads are completed as first-class railroads, fully complying with the requirements of law and the instructions of this department.

In view of the foregoing facts, and regarding the action of the
96 department on the 3d November, 1869, as an acceptance of said roads upon condition that said deficiencies should be supplied, the Secretary of the Interior has been authorized by the President to direct, and he hereby does direct, the issuing of patents to said companies for all the lands inuring to them, and revokes, until further directions are given, so much of said order of 3d November, 1869, as requires the suspention of patents.

Very respectfully,

C. DELANO, *Secretary.*

Hon. S. S. BURDETT,
Comm'r Gen. Land Office.

XVII. From the time when the claimant's road was opened over its entire length for the transportation of passengers and freight, as stated in finding VII, up to the time of the institution of this suit, the claim-

ant has performed service for the government, at the request of the respective departments thereof, in the transmission of dispatches over its telegraph line, and in the carriage and transportation of the mail, troops, munitions of war, supplies, and public stores upon its railroad. For such part of the services so performed as had, prior to and including the 12th day of May, 1874, been approved by the accounting officers of the defendants, the claimant has heretofore recovered judgment in this court for the amount due therefor. Between that day and the time of the institution of this suit, to wit, January 28, 1876, those officers have approved and allowed accounts for other such services to the aggregate sum of $1,187,254.21; and that sum is now due on account of those services.

XVIII. The total amount of the earnings, and the total amount of the expenditures of the Union Pacific Railroad Company annually and for each year from November 6, 1869, to November 5, 1875, both inclusive, were as shown in this finding; and the respective amounts which should be deducted from such total amounts respectively, as one theory or another may be adopted for ascertaining "net earnings," were also, during each and all the said periods, as shown in this finding, either in the tables or in the statements herein contained.

97 A.—*Earnings.*

		Nov. 6, 1869, to Nov. 5, 1870.	Nov. 6, 1870, to Nov. 5, 1871.	Nov. 6, 1871, to Nov. 5, 1872.	Nov. 6, 1872, to Nov. 5, 1873.	Nov. 6, 1873, to Nov. 5, 1874.	Nov. 6, 1874, to Nov. 5, 1875.
1	Commercial passenger earnings	$3,643,228 01	$2,991,881 47	$2,949,582 94	$3,616,344 61	$3,635,157 54	$4,179,364 69
2	United States passenger earnings	271,811 24	198,291 64	297,632 63	282,543 94	275,952 22	161,486 64
3	United States mail earnings	271,352 04	285,019 98	283,855 00	283,855 01	339,450 11	325,142 99
4	Express earnings	284,841 75	308,472 23	322,772 75	408,383 13	377,179 20	447,026 41
5	Commercial freight earnings	2,668,143 60	2,906,005 48	3,870,402 07	4,773,303 86	4,760,947 74	5,743,020 10
	United States freight earnings	236,047 98	227,985 40	156,701 59	218,140 45	286,535 40	224,046 61
	Company freight earnings	482,387 43	362,414 56	403,591 90	465,734 02	506,698 53	657,641 92
	Telegraph earnings	9,380 01	1,819 86				
	Ferry earnings	65,347 61					
	Omaha bridge earnings			218,176 46	378,421 23	393,654 62	464,328 07
11	Car-service earnings	58,243 38	48,409 30	16,309 20	14,835 35		27,931 63
12	Miscellaneous	116,300 14	94,610 20	112,920 09	140,039 31	218,942 15	166,696 94
13	Rent of buildings at termini or on line of road	12,129 25	16,915 06	16,930 54	16,165 01	17,502 90	24,652 98
14	Surplus in fuel and material accounts		121 181 41	9,156 49	68,351 34	22,611 08	59,865 50
	Totals	8,125,212 40	7,563,006 59	8,659,031 66	10,666,117 26	10,834,651 49	12,481,204 48

Items 1, 2, 3, 4, 5, 6, 8, 9, 10, and 14 are not in dispute.

As to item 7, fifteen per cent. should be deducted from the several items of earnings from company freight in case the items for "tenement houses and hotels," "new station-buildings," "tanks and water-tanks," "Laramie rolling-mills," and "expenditures for station-buildings, shops, and fixtures," &c., which are included below in expenditures, be disallowed.

Item 11, "car-service earnings," was the amount received for the use of cars by other companies. Item 12 includes among others the following earnings:

	Nov. 6, 1869, to Nov. 5, 1870.	Nov. 6, 1870, to Nov. 5, 1871.	Nov. 6, 1871, to Nov. 5, 1872.	Nov. 6, 1872, to Nov. 5, 1873.	Nov. 6, 1873, to Nov. 5, 1874.	Nov. 6, 1874, to Nov. 5, 1875.
Switching freight-cars at stations and hauling special cars for other roads	$24,147 49	$24,362 43	$16,376 33	$22,956 50	$19,337 99	$23,033 84
Received from other railroad companies, for use of sidings, labor of men, selling tickets, handling baggage, transferring freight, &c.	5,737 34	13,945 56	29,100 42	17,026 48	10,753 51	16,514 38
Rental of engines and cars	10,909 99	5,619 52	11,822 38	25,213 24	14,738 03	15,721 00
Dividends from stock of Pullman Pacific Car Company	23,400 00	.....	.....	.....	.....	.....
Total	64,194 82	43,927 51	57,299 13	65,196 22	50,829 53	55,269 22

And item 13 was the amount received for rent of tenement-houses and eating-houses. It is in dispute whether these several amounts in items 11, 12, and 13 should be included in gross earnings.

98 B.—*Expenditures.*

1	Conducting transportation expenses	$829,771 15	$671,194 53	$746,950 28	$759,426 61	$760,646 38	$917,250 86
2	Motive-power expenses	1,778,601 44	1,229,048 51	1,681,610 17	1,754,271 76	1,585,962 21	1,811,629 48
3	Maintenance of cars expenses	608,622 90	302,225 09	367,584 14	436,332 64	429,562 89	567,566 25
4	Maintenance of way expenses	1,403,090 28	995,683 49	1,551,999 92	1,700,434 97	1,700,481 14	1,910,420 20
5	General expenses (including taxes)	445,119 88	397,651 07	353,556 19	363,976 69	405,813 19	446,519 10
6	Ferry expenses	54,714 88					
7	Deficiency in fuel and material account	75,577 54					
8	Legal expenses	85,508 81	48,807 41	57,698 94	12,852 55	25,246 43	53,016 88
9	United States revenue stamps	6,639 32	926 02	1,866 72	326 65		
10	Salary account	16,355 90	53,522 39	28,725 86	24,886 69	54,218 18	32,750 83
11	Government directors	3,655 30	3,115 00	6,047 00	4,561 00	3,301 75	4,180 45
12	Government commissioners	2,391 13					722 40
13	Expense account	26,057 18	24,241 41	12,194 07	21,237 90	26,873 24	17,971 73
14	Telegraph earnings refunded			3,294 23			
15	Omaha bridge, expenses of operating			89,621 97	247,680 10	201,814 87	234,683 12
16	Car-service					21,780 78	
17	Discount and interest on floating debt	409,668 66	188,136 73	142,267 54	340,506 40	308,765 60	61,545 17
18	Expenses of land and town-lot departments	41,524 47	60,824 89	87,795 12	89,768 58	104,888 00	141,482 34
19	Taxes on lands and town lots	35,778 90	85,105 49	88,610 97	1,086 88	1,262 64	169,773 68
20	Interest on first-mortgage bonds	2,015,326 28	1,715,200 96	1,657,386 75	1,633,020 00	1,633,410 00	1,634,100 00
21	Interest on land-grant bonds	553,947 91	601,647 34	641,209 01	585,061 53	576,765 00	546,175 00
22	Interest on income bonds	673,238 41	882,306 95	935,550 00	935,641 06	778,348 00	450 00
23	Interest on sinking-fund bonds					157,912 00	1,021,388 88
24	Interest on Omaha bridge bonds			98,480 00	196,957 24	194,841 01	190,278 38
25	Premium on gold to pay coupons		117,569 84	149,278 18	264,963 27	235,971 97	301,786 53
26	Construction of Omaha bridge				24,334 25	4,390 00	
27	Expenditures for station buildings, shops, and fixtures, &c., as per statement attached	896,977 03	66,849 73	497,875 85	155,739 72	177,124 57	2,810 17
28	Requirements of sinking-funds for the redemption of funded debts:						
	Omaha bridge bonds			38,000 00	41,000 00	44,000 00	47,000 00
	Sinking-fund mortgage bonds						144,000 00
29	Premium on Omaha bridge bonds redeemed				12,218 00	10,752 50	12,513 29
30	United States interest half transportation accounts charged during the year	324,697 40	527,799 06	335,181 24	362,569 93	364,971 7	358,193 39
	Total	10,287,954 25	7,942,755 88	9,572,784 15	9,968,854 70	9,809,105 08	10,628,208 16

90 *Detail of expenditures for station buildings, &c., constituting item 27 above.*

1	Station buildings	$249,384 74	$48,296 40	$119,795 14	$14,580 81		
2	Shops and fixtures	40,618 27	94,855 51	106,067 83	2,744 02	$1,718 32	
3	Equipment	109,933 18		47,598 03	8,380 72	93,213 18	
4	Government commissioners	91 80					
5	Fencing	72,763 20	956 50	595 44			
6	Snow sheds and fences	209,147 90	5,787 67	116,770 54	66,969 23		
7	Express outfit	7,136 41					
8	Engineering	13,880 90	11,599 75	8,247 98	102 87		$2,810 17
9	Bridging	124,047 59			11,480 85		
10	Car shops and sheds	12,938 08	6,661 86	23,234 63	1,020 26		
11	Roadway and track	64,426 30		31,885 19	16,550 09		
12	Hotels	1,548 66					
13	Tenements		15,759 26	40,775 37	403 60		
14	Coal-sheds			2,905 70	11,006 63		
15	Omaha depot buildings				7,821 07	37,255 16	
16	Omaha general offices				14,977 95	6,896 46	
17	Real estate					12,525 00	
18	Laramie rolling-mill					16,550 33	
19	Water-works					8,968 12	
		896,977 03	183,906 95	497,875 85	156,038 10	177,124 57	2,810 17
	LESS RECEIPTS AND EXPENDITURES.						
20	Equipment		111,430 40				
21	Fencing				298 38		
22	Roadway and track		5,626 82				
			117,057 22		298 38		
	Totals of item No. 27.	896,977 03	66,849 73	497,875 85	155,739 72	177,124 57	2,810 17

Items 5, 6, 7, 8, 9, 10, 11, 12, 14, and 15 are not in dispute.

Item 1, "conducting transportation expenses," is liable to be reduced by the amounts shown in line 1 of the table below as expended for "tenement-houses and hotels," and by the amounts shown in line 2 as expended for new station-buildings; item 2, "motive power expenses," is liable to be reduced by the amounts shown in line 3 as expended for "engine-equipment," and by the amounts shown in line 4 as expended for "tanks and water-works;" item 3, "maintenance of cars expenses," is liable to be reduced by the amounts shown in line 5 as expended for "car-equipment"; and item 4, "maintenance of way expenses," is liable to be reduced by the amounts shown in line 6 as expended for the "Laramie rolling-mills," in case such several and respective outlays are regarded as not proper to be deducted from "gross earnings" in order to arrive at "net earnings."

		Nov. 6, 1872, to Nov. 5, 1873.	Nov. 6, 1873, to Nov. 5, 1874.	Nov. 6, 1874, to Nov. 5, 1875.
1	Tenement-houses and hotels		$1,659 96	$21,229 53
2	New station buildings	$6,909 98	18,146 77	78,589 57
3	Engine-equipment		25,398 69	63,977 70
4	Tanks and water-works		734 99	12,450 13
5	Car equipment		3,600 00	206,930 36
6	Laramie rolling-mills		43,716 01	149,859 30

Item 13, "expense account," is subject to be reduced by the following amounts in case such outlays are regarded as not proper to be deducted from "gross earnings" in order to arrive at "net earnings," viz: In the year November 6, 1869, to November 5, 1870, expenses relating to an issue of bonds, $10,339.76; March 13, 1871, cost of a plate for the bridge bonds, $1,500; June 5, 1874, an expense relating to the issue of sinking-fund bonds, $6,579.10.

100 The disputed expenditures in items 1, 2, 3, and 4 were for new construction. Item 27 was also for new construction.

Item 16 was for the use of the cars of other companies.

Items 17, 20, 21, 22, 23, 24, and 25 show payments of interest on debts.

Items 18 and 19 show payments made on account of the land department of the company's business.

Item 26 shows payments in the construction of the Omaha bridge above the amounts received from the sale of the mortgage-bonds secured by it.

Items 28 and 29 show expenditures made for a sinking fund for the redemption of the company's debt.

Item 30 shows an assumed payment of a portion of the interest on the government subsidy bonds by the application to it of half the government transportation account.

XIX. The total amount of the earnings and the total amount of the expenditures of the Union Pacific Railroad Company for the year commencing October 1, 1874, and terminating September 30, 1875, were as shown in this finding, and the respective amounts which should be deducted from such total amounts respectively, as one theory or another may be adopted for ascertaining "net earnings," were also during the said year as shown in this finding, either in the tables or in the statements herein contained.

A.—EARNINGS.

1. Commercial passenger earnings	$4,171,048 07
2. United States passenger earnings	187,025 79
3. United States mail earnings	325,143 00
4. Express earnings	433,945 73
5. Commercial freight earnings	5,595,406 04
6. United States freight earnings	262,773 95
7. Company freight earnings	657,340 31
8. Car-service earnings	10,741 86
9. Miscellaneous earnings	157,839 70
10. Rents of buildings	24,589 45
11. Omaha bridge earnings	456,786 01
12. Surplus in fuel and material	59,865 50
13. Dividends and interest on securities	108,985 15
14. Profit on investment	93,000 00
15.	12,544,490 56

Items 1, 2, 3, 4, 5, 6, 11, and 12 are not in dispute.

Should the items for "new station-buildings," "tenement houses and hotels," "tanks and water-tanks," "new shops and machinery," and "Laramie rolling-mills," which are included in "expenditures" below, be disallowed, then 15 per cent. should be deducted from item 7, "company freight earnings," in the above table.

Item 8, "car-service earnings," was the amount received by the Union Pacific Company for the use of its road by other companies.

Item 9, "miscellaneous earnings," includes, among others, the following earnings:

Switching freight cars and hauling special cars for other companies	$21,567 61
Received from other railroad companies for use of sidings, labor of men, selling tickets, handling baggage, transferring freight, &c	16,685 59

	Rental of engines and cars	8,213 20

101 Item 10, "rents of buildings," was the amount received for rent of tenement-houses, eating-houses, &c.

Items 13 and 14 represent earnings from sources outside the road; it was not contended at the trial that these items form an element in "gross earnings" in this suit.

It is disputed whether the several amounts in items 8, 9, and 10 should be included in "gross earnings."

B.—EXPENDITURES.

16.	Conducting transportation	$904,360 96
17.	Motive power	1,801,139 12
18.	Maintenance of cars	533,554 25
19.	" of way	1,928,459 08
20.	General expenses (including taxes)	512,906 88
21.	Omaha bridge, expenses of operating	231,155 68
22.	Interest on first-mortgage bonds	1,634,100 00
23.	" on sinking-fund bonds	1,021,388 88
24.	" on land-grant bonds	546,070 00
25.	" on Omaha bridge bonds	220,944 79
26.	" on income bonds	450 00
27.	Premium on gold to pay coupons	273,107 74
28.	Discount and interest on floating debt	89,481 90
29.	Salary accounts	33,285 83
30.	Expense accounts	18,746 21
31.	Legal expenses	49,966 88
32.	Government directors	4,180 45
33.	" commissioners	722 40
34.	Expenses of land and town-lot departments	118,973 43
35.	Taxes on lands and town lots	163,123 51
36.	Requirements of sinking-funds for the redemption of funded debts:	
	Sinking-fund mortgage bonds	144,000 00
	Omaha bridge bonds	47,000 00
37.	Premium on Omaha bridge bonds redeemed	12,513 32
38.	United States interest, half transportation accounts charged during the year	350,609 94
39		10,660,241 25

Items 20, 21, 29, 30, 31, 32, and 33 are not is dispute.

Item 16, "conducting transportation," is liable to be reduced by $80,730.60, spent for "new station buildings," and $16,539.86, spent for "tenement houses and hotels"; item 17, "motive power," is liable to be reduced by $83,905.42, spent for "engine equipment," $9,664.24 spent for "tanks and water-tanks," and $15,917.58 spent for "new shops and machinery"; item 18, "maintenance of cars," is liable to be reduced by $192,832, spent for "car equipment"; and item 19, "maintenance of way," is liable to be reduced by $192,989.74, spent for the "Laramie rolling-mill," in case such several and respective outlays are regarded as not proper to be conducted from "gross earnings," in order to arrive at "net earnings."

The disputed expenditures in items 16, 17, 18, and 19 were for new construction.

Items 22, 23, 24, 25, 26, 27, and 28 show payment of interest on the company's debts.

102 Items 34 and 35 show payments on account of the land department of the company's business.

Items 36 and 37 show payments made for a sinking-fund for the redemption of the company's debts.

Item 38 show an assumed payment of a portion of the interest on the government subsidy bonds by the application to it of half the government transportation.

XX. Up to the 1st of July, 1874, of the lands granted by the United States to the claimant 3,445,781 acres had been patented to the claimant; of which, up to that date, the claimant had sold 1,013,774 acres.

Additional findings allowed on request of the claimant.

XXI. That the laying of the last rail of the road merely enabled the company to get a train over it, and that it is not practicable to complete a road before all its rails are laid. This was especially so in the case of this road, because a large portion of material that was required to make the final completion was at the west end of the road.

XXII. That the road performed service for the government at the request of the respective departments thereof, in the transmission of dispatches, and in the carriage and transportation of mails, troops, munitions of war, &c., for several years before the road was open for its entire length.

XXIII. That the disputed items in charges made by the company under the head of expenditures, namely, "tenement-houses and hotels, new station buildings, engine equipments, tanks and water-works, car equipment," were each of them not only new, but rendered necessary by the increasing business of the road. That the said tenement-houses and hotels were necessary for occupancy by employés of the company and for feeding passengers. The rents of these hotels and tenements are credited among the earnings of the company in the statement of earnings, schedule B, reported on these findings.

XXIV. That the Laramie rolling-mill was built as an economy. The company was obliged until its erection to transport its rails to distant places East to be rerolled, the expenses of which had been charged to "maintenance of way" up to the completion of the rolling-mill. The charge, up to that period, is among the items of expenditure allowed and not disputed.

XXV. On the 1st of November, 1865, the company executed their first mortgage authorized by the 10th section of the act of 1864. On the 6th November, 1869, the company owed a large floating debt, and also a large funded debt, secured by income bonds, first-mortgage bonds, and land-grant bonds, to which were afterward added on the 18th December, 1873, sinking-fund bonds, and on the 1st April, 1871, Omaha bridge bonds. The amount of expenditures charged by the company, constituting items 17, 20, 21, 22, 23, and 24, of schedule B, are payments of interest upon said floating debt and said mortgage debts as the same accrued. Items 25, 28, and 29, of schedule B were sums paid for premiums, sinking-fund, &c., required by the terms of the Omaha bridge mortgage and the sinking-fund mortgage. Items 18 and 19 of schedule B are expenditures made by the company for taxes connected with the sales of their lands mortgaged.

Additional findings allowed on request of the defendants.

XXVI. That the provisions of the act of July 1, 1862, were accepted by the company September 4, 1862.

103 XXVII. That the trestles and pile bridges on the road November 6, 1869, were the same as used on all American roads, well put up, of the modern plans, strong and perfectly safe, and would not require replacing for several years.

XXVIII. That on the 22d of July, 1869, in partial performance of the order of the President of July 15, 1869, $640,000 of subsidy bonds were issued by the United States to the claimant, that amount being the subsidy bonds due on the section from the 1000th to the 1020th mile from Omaha, the subsidy bonds upon all the previous sections having been received by the claimant before that time.

XXIX. That the reports upon sections of the road mentioned in finding V, refer to those on the 1st, 2d, 3d, and 5th sections, defects and deficiencies on which were remedied before September 1, 1866.

XXX. That the bonds to which the claimant became entitled, mentioned in finding X, remained unissued until July 14, 1870, in accordance with an agreement between the claimant and the Central Pacific Railroad Company of California.

XXXI. That certain bonds were issued on September 1, 1869, by the claimant, known as income bonds, and that for the purpose of securing the payment of interest warrants attached to such bonds, it was therein agreed "to devote the net earnings of its said railroad, after deducting therefrom the payments of interest that shall fall due upon the first mortgage of its road and also upon the mortgage of its lands heretofore made and already issued or to be issued by it," to the payment of such interest warrants, and the said claimant agreed further in said bond to make up and furnish on the first days of January and July of each year to the trustees named "a fair and just account of the net earnings of said road for the six months next preceding, and will deduct therefrom the interest due and payable from it upon the first mortgage of its road heretofore issued and upon its land mortgage bonds heretofore issued or to be issued," &c.

Conclusion of law.

Upon the foregoing facts the conclusion of law is, that the defendants are entitled to recover, under their counter-claim, as five per cent. of the claimant's net earnings, from November 6, 1869, to November 5, 1874, inclusive, the sum of $1,402,602.28; which sum is made up in the manner set forth in the opinion filed herein by the chief justice of the court and concurred in by Richardson, J.; and that the claimant is entitled to recover $593,627.10, as one-half of the compensation due from the defendants to it for services rendered; and that for the difference between those sums, to wit, $808,975.18, judgment should be rendered in favor of the defendants.

104 XI. *Requests of claimant for additional findings of fact and the rulings thereon.*

The Union Pacific Railroad Company respectfully requests the court to add to their findings as follows, to wit:

I. That upon the oral evidence as contained in the testimony of G. M. Dodge and William M. White, the following fact found by the audi-

tor, namely, that "all the sections, as far as the 800th mile, were recommended for acceptance by the section commissioners upon the understanding between the commissioners and the officers of the company that work should be done upon them afterwards for the purpose of remedying deficiencies incident to the rapid construction of a railroad through such a region."

II. That the letter of Attorney-General Evarts to the President, September 5, 1868, and also the letter of Attorney-General
105 Evarts to the President, February 11, 1869, with its inclosure, namely, letter of the Attorney-General to the Secretary of the Treasury, February 18, 1869; also letter of the Attorney-General to the Secretary of the Interior, February 18, 1869, with its inclosure, namely, letter of the president and secretary of the Union Pacific Railroad Company, consenting to the withholding its lands as security for the ultimate completion of the road, be found and reported as part of the facts of the cause, showing, with the declaration and agreement of the company, more completely the action both of the government and of the company as to taking and giving security for the completion of the road.

III. The fact established by the uncontradicted testimony of G. M. Dodge, that immediately after the last rail was laid the "company commenced using it for business to a limited amount. We could not use the road to its full capacity, of course, till a long time afterwards. The last 200 miles of the road were laid in the winter and spring, and of course as the frost came out of the ground it put our track all out
106 of line, and made a good deal of work necessary to keep it in a condition to run over it slowly and safely.

IV. On the 9th of October, 1868, the Secretary of the Interior, by direction of the President, appointed Warren and others commissioners, with instructions to examine the entire road, referred to the standard of construction of February 24, 1866, asserted that this standard had reference in the first instance to a provisional completeness, but that assurances are given by the company that the road should be brought with all practicable dispatch to the standard prescribed by Congress, and instructing them to report fully what would be required to make the road, so far as built, equal to a fully completed, first-class railroad, and that on the 23rd November, 1868, the commission reported, giving details, that an expenditure on the road, as far as built—890 miles—to render it equal to a first-class road, was required of $6,489,340, and that said instructions and reports be found among the facts.

107 V. That on the 14th of January, 1869, the Secretary of the Interior addressed a letter of instructions to a new commission to ascertain the expenditure necessary to bring the road up to the standard of a fully completed, first-class road, and that on the 20th of May, 1869, that commission reported, two of them, that to supply the deficiencies would require $6,771,710; the other two, that it required $278,000 less, and that said instructions and said report be found among the facts.

VI. That the message of the President to the House of Representatives, December 18, 1868, with its inclosures, be found and reported among the facts, as showing the action of the government in seeking to retain subsidy bonds to secure the ultimate completion of the road.

VII. That on the 15th of July, 1869, the Secretary of the Interior transmitted reports of the section commissioners from the 1000th to the 1085th mile, and recommended the issue of subsidy bonds and patents upon the condition that no such bonds or patents should be

issued until security should be deposited with the Secretary of the Treasury for the ultimate completion of the road, and that the President endorsed thereon his approval and direction that the same be carried into effect.

VIII. That the laying of the last rail of the road merely enabled the company to get a train over it, and that it is not practicable to complete a road before all its rails are laid. This was especially so in the case of this road, because a large portion of material that was required to make the final completion was at the west end of the road.

IX. That the heavy trestles over the Black Hills at Piedmont, Aspen, Wahsatch, and Echo had to be filled with earth, and that they were not finished until about a month before the last examination of commissioners in the fall of 1874, thus showing that the road was not actually completed until the period fixed by the commissioners.

X. That the road performed service for the government at the request of the respective departments thereof, in the transmission of dispatches, and in the carriage and transportation of mails, troops, munitions of war, &c., for several years before the road was open for its entire length.

XI. That the court will make the entire detail of expenditures for station buildings, &c., constituting item 27 of schedule B part of their findings, the same being imperfectly copied on page 65 of the draft of findings.

XII. That the disputed items in charges made by the company under the head of expenditures, namely, "tenement houses and hotels, new station buildings, engine equipment, tanks and water-works, car equipment," were each of them not only new but rendered necessary by the increasing business of the road. That the said tenement houses and hotels were necessary for occupancy by employes of the company and for feeding passengers. The rents of these hotels and tenements are credited among the earnings of the company in the statement of earnings, schedule B, reported in these findings.

XIII. That the Laramie rolling-mill was built as an economy. The company was obliged, until its erection, to transport its rails to distant places East to be rerolled, the expense of which has been charged to "maintenance of way," up to the completion of the rolling-mill. The charge, up to that period, is among the items of expenditure allowed and not disputed.

XIV. On the 1st of November, 1865, the company executed their first mortgage, authorized by the 10th section of the act of 1864. On the 6th November, 1869, the company owed a large floating debt, and also a large funded debt, secured by income bonds, first-mortgage bonds, and land-grant bonds, to which were afterwards added on the 18th of December, 1873, sinking-fund bonds, and on the 1st of April, 1871, Omaha bridge bonds. The amount of expenditures charged by the company, constituting items 17, 20, 21, 22, 23, and 24, of schedule B, are payments of interest upon said floating debt and said mortgage debts as the same accrued. Items 25, 28, and 29 of schedule B, were sums paid for premiums, sinking fund, &c., required by the terms of the Omaha-bridge mortgage and the sinking-fund mortgage. Items 18 and 19 of schedule B are expenditures made by the company for taxes connected with the sales of their lands mortgaged, which, by the terms of the mortgage, the company were obliged to pay, and that the same were paid out of its income.

UNION PACIFIC R. R. CO.,
By its counsel, S. BARTLETT.

Of the foregoing requests, the following disposition is made by the court:

I. Disallowed, because the official action of defendantion in regard to each and every section of the road is already fully stated in the findings of the court; and because it asks for the finding of evidence.

II. Disallowed, because it asks for the finding of documents which are not admissible in evidence of facts in this suit; and because it requests the court to find an argument in place of a fact.

112 III. Disallowed, because it requests the court to find evidence.

IV. Disallowed.

V. Disallowed.

VI. Disallowed.

VII. Disallowed, because the documents to which it refers are already set forth in full in the finding made by the court.

VIII. Allowed.

IX. Disallowed, because argumentative.

X. Allowed.

XI. This request has been complied with, by reprinting correctly the matter referred to.

XII. Allowed as amended.

XIII. Allowed as amended.

XIV. Allowed as amended down to and including the word "mortgage" in the fourth line from the bottom. What follows that word is disallowed.

113 XII. *Requests of defendants for additional findings of fact and the ruling thereon.*

And now comes the Attorney-General, on behalf of the United States, and requests the court to make the following additional findings of fact:

1. That the provisions of the act of July 1, 1862, were accepted by the company September 4, 1862.

2. That the president of the company, under date of June 14, 1869, in a communication to the Secretary of the Interior, speaks of the road at that time as "completed speedily and in accordance with the high standard established by the government."

3. That the chief engineer of the company under date of May 29, 1869, in a report to the Secretary of the Interior, says the road "is

114 more complete and perfect than any new road ever built."

4. That the chief engineer of the company under date of December 1, 1869, in reporting the "final completion" of the road to the president of the company, says it is "the best new road in the United States."

5. That the trestles and pile bridges on the road November 6, 1869, were the same as used on all American roads, well put up, of the modern plans, strong and perfectly safe, and would not require replacing for several years.

6. That on the 22nd of July, 1869, in partial performance of the order of the president of July 15, 1869 [finding IV, J. R.], $640,000 of subsidy bonds were issued by the United States to the claimant, that amount being the subsidy bonds due on the section from the 1,000th to 1,020th mile from Omaha, the subsidy bonds on all the previous sections having been received by the claimant before that time.

115 7. That the reports upon sections of the road mentioned in finding V refer to those on the 1st, 2nd, 3rd, and 5th sections, defects and deficiencies on which were remedied before September 1, 1866.

8. That the bonds to which the claimant became entitled, mentioned in finding X, remained unissued until July 14, 1870, in accordance with an agreement between the claimant and the Central Pacific Railroad Company of California.

9. That certain bonds were issued on September 1, 1869, by the claimant, known as income bonds, and that for the purpose of securing the payment of interest warrants attached to such bonds, it was therein agreed "to devote the net earnings of its said railroad, after deducting therefrom the payments of interest that shall fall due upon the
116 first mortgage of its road and also upon the mortgage of its lands heretofore made and already issued or to be issued by it," to the payment of such interest-warrants, and the said claimant agreed further in said bond to make up and furnish on the first days of January and July of each year to the trustees named "a fair and just account of the net earnings of said road for the six months next preceding, and will deduct therefrom the interest due and payable from it, upon the first mortgage of its road heretofore issued, and upon its land-mortgage bonds heretofore issued, or to be issued," &c., &c.

10. That the stocks of the company, except to a very limited extent, in all not more than half a million of dollars, was not paid for in cash.

CHA'S DEVENS,
Attorney-General

117 Upon the foregoing requests of the defendants the court made the following ruling, to wit:

Of the foregoing requests, the first, fifth, sixth, seventh, eighth, and ninth are allowed, and the second, third, fourth, and tenth are refused.

118 XIII. *Opinion of the court.*

DRAKE, Ch. J., delivered the following opinion, concurred in by RICHARDSON, J.:

Before the 12th of May, 1874, and between that day and the date of the institution of this suit, the claimant performed service for the government, in the transmission of dispatches over its telegraph line, and in the transportation of mails, troops, munitions of war, supplies, and public stores upon its railroad. For the services so rendered the accounting officers of the Treasury Department have approved and allowed accounts to the amount of $1,187,254.21, and that sum is now due and unpaid on account of those services.

There is no controversy as to the rights of the respective parties in regard to that sum. The defendants are entitled to retain one-half of it in the Treasury, toward the ultimate payment of bonds of the United States issued to the claimant; and the claimant is entitled to be paid the other half, provided the defendants' counter-claim cannot be set off against it.

This counter-claim is for "five per centum of the net earnings" of the claimant's road after its completion, and is claimed by the defendants under section 6 of the act of July 1, 1862, "to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes." (12 Stat. L., 489.)

As in the decision of the questions arising under the counter-claim, the third, fourth, fifth, and sixth sections of that act will be more or less brought under discussion, we present the material parts of them, as they

were enacted, with some amendments incorporated, which were made by the act of July 2, 1864 (13 Stat. L., 356):

"SEC. 3. That there be, and is hereby, granted to the said company, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores thereon, every alternate section of public land, designated by odd numbers, to the amount of ten alternate sections per mile on each side of said railroad, on the line thereof, and within the limits of twenty miles on each side of said road, not sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed.

"SEC. 4. That whenever said company shall have completed twenty consecutive miles of any portion of said railroad and telegraph line, ready for the service contemplated by this act, and supplied with all necessary drains, culverts, viaducts, crossings, sidings, bridges, turnouts, watering places, depots, equipments, furniture, and all other appurtenances of a first-class railroad, the rails and all the other iron used in the construction and equipment of said road to be American manufacture of the best quality, the President of the United States shall appoint three commissioners to examine the same and report to him in relation thereto; and if it shall appear to him that twenty consecutive miles of said railroad and telegraph line have been completed and equipped in all respects as required by this act, then, upon certificate of said commissioners to that effect, patents shall issue conveying the right and title to said lands to said company, on each side of the road as far as the same is completed, to the amount aforesaid; and patents shall in like manner issue as each twenty miles of said railroad and telegraph line are completed, upon certificate of said commissioners. Any vacancies occurring in said board of commissioners by death, resignation, or otherwise, shall be filled by the President of the United States: Provided,
119 however, that no such commissioners shall be appointed by the President of the United States unless there shall be presented to him a statement, verified on oath by the president of said company, that such twenty miles have been completed in the manner required by this act, and setting forth with certainty the points where such twenty miles begin and where the same end, which oath shall be taken before a judge of a court of record.

"SEC. 5. That for the purposes herein mentioned the Secretary of the Treasury shall, upon the certificate in writing of said commissioners of the completion and equipment of twenty consecutive miles of said railroad and telegraph, in accordance with the provisions of this act, issue to said company bonds of the United States of one thousand dollars each, payable in thirty years after date, bearing six per centum per annum interest (said interest payable semi-annually), which interest may be paid in United States Treasury notes or any other money or currency which the United States have or shall declare lawful money and a legal tender, to the amount of sixteen of said bonds per mile for such section of twenty miles, and to secure the repayment to the United States, as hereinafter provided, of the amount of said bonds so issued and delivered to said company, together with all interest thereon which shall have been paid by the United States, the issue of said bonds and delivery to the company shall ipso facto constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling stock, fixtures, and property of every kind and description, and in consideration of which said bonds may be issued; and on the refusal or failure

of said company to redeem said bonds, or any part of them, when required so to do by the Secretary of the Treasury, in accordance with the provisions of this act, the said road, with all the rights, functions, immunities, and appurtenances thereunto belonging, and also all lands granted to the said company by the United States which, at the time of said default, shall remain in the ownership of the said company, may be taken possession of by the Secretary of the Treasury, for the use and benefit of the United States: Provided, this section shall not apply to that part of any road now constructed.

"SEC. 6. That the grants aforesaid are made upon condition that said company shall pay said bonds at maturity, and shall keep said railroad and telegraph line in repair and use, and shall at all times transmit dispatches over said telegraph line, and transport mails, troops, and munitions of war, supplies, and public stores upon said railroad for the government, whenever required to do so by any department thereof, and that the government shall at all times have the preference in the use of the same for all the purposes aforesaid (at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service), and one-half of all compensation for services rendered for the government shall be applied to the payment of said bonds and interest until the whole amount is fully paid. Said company may also pay the United States, wholly or in part, in the same or other bonds, Treasury notes, or other evidences of debt against the United States, to be allowed at par; and after said road is completed, until said bonds and interest are paid, at least five per centum of the net earnings of said road shall also be annually applied to the payment thereof."

The whole controversy in the case grows primarily out of these words at the close of the sixth section: "And after said road is completed, until said bonds and interest are paid, at least five per centum of the net earnings of said road shall also be annually applied to the payment thereof."

In support of the counter-claim, the defendants contend that the road was completed, within the meaning of those words, on or before the 6th of November, 1869; and that thereafter there were net earnings of the road, of which the claimant was bound to apply annually 5 per cent. to the payment of the bonds issued to it by the United States.

Against the counter-claim the claimant insists that the road was not completed until the 1st of October, 1874; and that its net earnings were less than contended for by the defendants.

Two questions are therefore to be passed upon by the court, namely: 1. When was the Union Pacific Railroad completed from Omaha to its western terminus, within the meaning of the act aforesaid? And 2. What were its annual net earnings after the date of its completion?

Before proceeding to discuss those points, a question raised by the claimant must be disposed of, for it suggests a view which, if sustained, would be fatal to any recovery on the counter-claim. The question is, whether it was not the purpose of section 10 of the act of 1864 to postpone the payment of the 5 per cent. of the net earnings until the new mortgage debt and its interest, which that section authorized, should be first discharged?

120 The following is the section referred to:

"SEC. 10. That section five of said act be so modified and amended that the Union Pacific Railroad Company, the Central Pacific Railroad Company, and any other company authorized to participate in the construction of said road, may, on the completion of each section of

said road, as provided in this act and the act to which this act is an amendment, issue their first-mortgage bonds on their respective railroad and telegraph lines to an amount not exceeding the amount of the bonds of the United States, and of even tenor and date, time of maturity, rate and character of interest with the bonds authorized to be issued to said railroad companies, respectively. And the lien of the United States bonds shall be subordinate to that of the bonds of any or either of said companies hereby authorized to be issued on their respective roads, property, and equipments, except as to the provisions of the sixth section of the act to which this act is an amendment relating to the transmission of dispatches and the transportation of mails, troops, munitions of war, supplies, and public stores for the Government of the United States."

We are unable to perceive how the effect suggested can be given to this section, or to see the force of the train of reasoning by which the learned counsel for the claimant sought to give it that effect. We need not stop to controvert his positions in detail, but will state our own views of the subject.

The act of 1862, in aid of the construction of the Union Pacific Railroad, made four different grants to the claimant, viz: 1. The right of way through the public lands; 2. The right to take from the adjacent public lands materials for the construction of the road; 3. Alternate sections of public land; and, 4. Bonds of the United States to the amount *amount* of $16,000 per mile.

The issue and delivery of those bonds to the claimant was declared by the act to constitute a first mortgage on the whole line of its railroad, together with the rolling-stock, fixtures, and property of every kind and description appertaining thereto.

That is the sole lien imposed by that act on the property of the claimant.

But the grants above specified are declared to be made upon four conditions, viz: 1. That the claimant should pay said bonds at maturity; 2. That it should keep its railroad and telegraph line in repair and use; 3. That it should at all times transmit dispatches over said telegraph line, and transport mails, troops, and munitions of war, supplies, and public stores, upon said railroad for the government whenever required to do so by any department thereof; and, 4. That the government should at all times have the preference in the use of the road and telegraph line for the purposes aforesaid.

In addition to the lien and conditions so imposed and declared, the sixth section made the provision aforesaid in regard to the five per cent. of the net earnings of said road.

That provision imposed an obligation on the claimant which, by accepting the charter, it agreed to fulfill; but it was not declared that that obligation constituted a lien on the road, or that the grants made to the claimant, as above stated, were to be conditional upon the payment of the five per cent. It was simply a naked legal obligation, dependent for its fulfillment merely on the existence of net earnings.

Such being the state of the matter, the tenth section of the act of 1864 authorized the claimant to issue $16,000 per mile of first-mortgage bonds, and in connection with that authority declared that "the lien of the United States bonds shall be subordinate to that of the bonds * * * hereby authorized to be issued, except as to the provisions of the sixth section of the act to which this act is an amendment, relating to the transmission of dispatches and the transportation of mails, troops, munitions of war, supplies, and public stores for the Government of the United States."

121 The confusion produced in that sentence, by declaring an exception where none in fact existed or could in the nature of things exist, since the matter excepted is wholly different in character from that from which it is excepted, tends to confusion in its construction. Without stopping to discuss it, we hold that the sentence means simply this: 1. That the government yields its priority of lien on account of its bonds, and, 2. Reasserts and reimposes the condition declared in the sixth section of the act of 1862, as to the transmission of dispatches and the transportation of mails, troops, &c.

Has that provision any bearing on the five per cent. question involved in the present case? We think not. If it appeared that the earnings of the claimant's road, after paying the expenses of its management and operation, were not sufficient to pay the interest on the first-mortgage bonds issued under the authority of that tenth section, we should not hesitate to hold that the government could not demand the payment of the five per cent. But no such fact exists. On the contrary, those earnings are largely more than enough to pay both the interest on those bonds and the five per cent. No question, therefore, arises here, such as might arise between the government and the first-mortgage bondholders, if the earnings were insufficient to pay that interest, and the government should nevertheless insist on the payment of the five per cent. The question now is, whether that section, as between the claimant and the defendants, on the facts now shown to exist, affects the obligation of the claimant to pay the five per cent. We are clear that it does not. It does not refer in terms to that obligation; nor does it release the claimant from its contract to pay at maturity the bonds received by it from the government; nor does it annul or release the government's lien for the payment of those bonds. It simply subordinates "the lien of the United States bonds" to that of the first-mortgage bonds, and does no more; leaving the five per cent. obligation in full force, and not postponed until the new mortgage debt and its interest should be first discharged.

Proceeding now to consider the sections of the act of 1862, in connection with the subject-matter of the completion of the road, there are certain propositions which do not need extended argument for their establishment, but may be considered as entirely plain on the mere reading of the sections, and not capable of being overthrown by any argument. They are as follows:

1. The obligation to complete the road rested solely on the claimant.

2. The completion of the road was, therefore, to be determined solely by what the claimant did in building it.

3. As rights and obligations inter partes depended on the fact of the completion of sections of the road, and, finally, of the whole road, the fact of completion in each case was of necessity to be ascertained and declared in some way binding and conclusive on both parties.

4. The act prescribes how the fact of completion should be ascertained and declared.

5. The defendants having enacted and the claimant accepted that act, they thereby mutually agreed that the fact of completion should be ascertained and declared, as in that act prescribed, and not otherwise.

6. When the fact of completion of any section of the road was ascertained and declared in the way prescribed in the act, that fact was finally and immovably settled and determined, as between the claimant and the defendants, and could not be unsettled or changed by any executive authority, nor, except for fraud, by any judicial authority.

We do not pause to comment upon or amplify these proposi-

122 tions, believing them too plain to need either comment or amplification. If this be so, then we have only to give the legal deductions which seem to us to flow from them.

1. In the first place, the ascertainment and declaration, in the way prescribed in the act, of the completion of any section of the road, did, in and of itself, confer on the claimant the right to demand and receive lands and bonds, and impose on the defendants the obligation to convey and deliver the lands and bonds.

2. The claimant, having demanded and received the lands and bonds, as provided in the act, for each several section of completed road from end to end of the line, expressly on the ground that each section was "completed and equipped in all respects as required by said act," cannot be permitted afterward to deny the fact of the completion of any such section.

3. The completion of the whole road, when ascertained and declared as aforesaid, did, in and of itself, confer on the defendants the right to demand, and impose on the claimant the obligation to pay, five per cent. of the net earnings of the road.

4. The claimant having, through the oath of its president, affirmed the completion, "as required by the act," of each and every section of the whole road; and the fact of such completion having been ascertained and declared in the way prescribed and agreed upon; and the claimant having demanded and received the full benefit in lands and bonds of such completion for each and every section of the road, it is not competent for it now to deny or question, except for fraud, the fact of the completion of the entire road; but it is absolutely estopped from so doing.

The only escape from these conclusions is, that the completion referred to in section 6 is a different thing from the completion referred to in sections 4 and 5. This is, in effect, the view urged by the claimant, as showing that the completion did not exist, for the purpose of taking money from it, until about five years after it had existed for the purpose of its demanding and receiving lands and bonds. Of course, if the act was so framed as to require this extraordinary interpretation, it must be so interpreted; but such a meaning is not to be ascribed, unless the language leave no escape from it.

No intelligent and unbiassed reader of those sections would suppose that they were intended to require two completions. There can be no such thing as two completions of any piece of work. There may be different degrees and different stages of completion, but when completion is reached that is the end.

And yet the claimant insists that two completions were there authorized. And singularly enough, as the act is viewed by the claimant, each completion was to inure to its benefit, and each to operate adversely to the defendants. That is to say, to enable the claimant to get lands and bonds, the road was complete in 1869; but to entitle the government to the 5 per cent. of the net earnings, the road was not complete till 1874. It seems to us impossible that any such one-sided absurdity could have been intended. The completion referred to in the sections above set forth was one. In section 4 it is a completion by sections; in section 6 a completion of the aggregate of all the sections.

The sole answer to this attempted by the claimant is, that to the President of the United States was confided by law the supervision of the construction of the road, and that he never formally ascertained and determined that the road was finally completed until November,

123 1874, when he determined that it was completed on the 1st of October, 1874.

There is nothing in this position, unless it be shown that the law devolved on the President the duty of ascertaining and determining when the road was "finally completed." No such duty was imposed on him. In fact the law did not raise the question of final completion of the road. The statute nowhere uses the word final or finally in that connection. Had it done so, the case would have been involved in greater difficulty than it is; for it would have been almost impossible to decide when the point of final completion had been reached; that is, the point at which nothing more could be done to bring the road up to the highest state of completeness that the intellect and knowledge and skill of man could devise. The language of the act which was to be applied, and was in fact applied, by sections, to every foot of the road from its eastern to its western terminus, was as follows:

"Whenever said company shall have completed twenty consecutive miles of any portion of said railroad and telegraph line, ready for the service contemplated by this act, and supplied with all necessary drains, culverts, viaducts, crossings, sidings, bridges, turnouts, watering-places, depots, equipments, furniture, and all other appurtenances of a first-class railroad, * * * the President of the United States shall appoint three commissioners to examine and report to him in relation thereto; and if it shall appear to him that twenty consecutive miles of said railroad and telegraph line have been completed and equipped in all respects as required by this act, then, upon certificate of said commissioners to that effect, patents shall issue conveying the right and title to said lands to said company, on each side of the road as far as same is completed, to the amount aforesaid; and patents shall in like manner issue as each twenty miles of said railroad and telegraph line are completed, upon certificate of said commissioners. * * * For the purposes herein mentioned the Secretary of the Treasury shall, upon the certificate in writing of said commissioners of the completion and equipment of twenty consecutive miles of said railroad and telegraph, in accordance with the provisions of this act, issue to said company bonds, &c."

Now, the claimant practically insists that the road was not to be considered as having reached completion within the meaning of this language until it had reached completion; but this was not, in our opinion, the intent of the law. The act does not require an entirely complete first-class railroad, but a railroad "completed and equipped in all respects as required by this act."

And what constituted such a road? Changing the collocation of the clauses, but not in the least changing the meaning, the requirements of the act were simply these, and no more: 1, That the road should be "supplied with all necessary drains, culverts, viaducts, crossings, sidings, bridges, turnouts, watering-places, depots, equipments, furniture, and all other appurtenances of a first-class railroad"; and, 2, That the road should be "ready for the service contemplated by this act"; which service, as stated in section 3, was "the safe and speedy transportation of the mails, troops, munitions of war, and public stores."

It seems to us clear that this language did not require the sections of the road, when examined, to be in the highest condition of completeness attainable in a first-class railroad, but only in such state of completion, in the particulars above recited, as to be ready for the service contemplated by the act. If we had any doubt on this point it would be removed by the language of the proviso to the fourth section, requir

ing an oath to be made by the president of the claimant in order to obtain the appointment of commissioners to examine and report upon a section of the road. That officer was required to swear, not that the section had reached completeness, but that it had been "completed in the manner required by the act."

If this view be correct, then it is undeniably true that every mile of the road was found and reported by commissioners appointed as
124 prescribed in the act to have been completed and equipped as a first-class railroad, and ready for service, and that the President of the United States acted upon every one of their reports, and ordered patents for lands and bonds to be unconditionally issued to the claimant for each section of the road as so reported.

And here, in our judgment, ended the authority of the President in the matter. There is not, as we consider, the least ground for claiming that the supervision of the construction of the road was confided to him by law. Nor is there any ground for claiming that he was authorized to ascertain and determine whether the road was finally completed. His whole authority was, 1, To appoint commissioners to make report to him; and 2, When they reported, to say whether it appeared to him that twenty consecutive miles of the road had been "completed and equipped in all respects as required by this act." When he performed those two duties his functions were ended. And when the commissioners made report to him that the westernmost and last section of the road was so completed and equipped, and he signified that it so appeared to him, then the whole road was, within the meaning and for the purposes of the act, a completed road; and nothing which the President might afterward say or do could have effect in law to make it otherwise. It is upon the President's further action in the premises, now to be considered, that the claimant bases its demand for the fixation of October 1, 1874, as the day of the completion of the road.

On the 9th of February, 1869, the Secretary of the Interior laid before the President the report of the commissioners upon the two sections, of twenty miles each, "commencing at the 960th and terminating at the 1,000th mile-post, west of the initial point on the Missouri River, near Omaha"; the latter mile-post being only $38\frac{48}{100}$ miles from the western terminus of claimant's road, as ultimately established.

The report represented those sections as "ready for present service, and completed and equipped as a first-class railroad"; and the Secretary of the Interior recommended "the acceptance of the same, and the issue to said company of bonds and of patents for lands due on account of said sections." The President, on the same 9th of February, 1869, indorsed on the Secretary's letter these words: "The within recommendations of the Secretary of the Interior are approved; and the Secretary of the Treasury and himself are hereby directed to carry the same into effect."

This was exactly what had been done in the case of each previously-examined section of the road, except some of the first, which were reported as in some respects deficient, but the defects were afterward remedied. Therefore, on that 9th of February, 1869, it was a fact, undisputed and indisputable, that one thousand miles of the claimant's road had been reported upon by commissioners, and accepted by the President of the United States, as "ready for present service, and completed and equipped as a first-class railroad." This was all that the statute required to entitle the claimant to the benefits resulting from the construction of its road. There the claimant was lawfully entitled to rest, and demand and receive all those benefits.

But the claimant chose not to rest there; but, three days after all its

rights up to the 1,000th mile-post had been settled and fixed in the manner prescribed by law, it engaged in a transaction which has so important a bearing on this case that special notice must be taken of it; for out of it springs, and upon it rests, the claimant's demand upon the court to fix the 1st of October, 1874, as the date of the completion of the road, from and after which the claimant was bound, if
125 bound at all, to apply 5 per cent. of its net earnings to the payment of the bonds issued to it.

This was the transaction: On the 12th of February, 1869, when only 38.68 miles of its road remained to be constructed, the claimant signed two written declarations and agreements which, in effect, formally admitted and declared that its road up to the 1,000th mile-post had never been completed and equipped as a first-class railroad, and, therefore, that the previous reports of the commissioners were false. The first of those writings agreed that $3,000,000 of its first-mortgage bonds should be deposited with the defendants "as security for the completion of the structure and equipment of the road, according to the provisions of the Statutes of the United States providing for the building and completion of said road and its equipments"; and that the bonds so deposited should be held by the Treasury Department "until the President of the United States, on a proper examination of the actual completed road and equipments, shall be satisfied that the same are so completed as a first-class railroad according to law." The second of those writings, "as a further security to the same end," agreed that "the lands given to the company by the acts of Congress" should "remain without patents being taken out therefor until the President of the United States, upon a proper examination of the actual condition of the road, its structure and equipments, shall be satisfied that the same have been completed according to law."

It appears that the claimant was required by the Attorney-General of the United States to execute those papers "as a guarantee for the ultimate full completion and equipment of its road"; and that fact is relied on as giving force and efficacy to the proceeding. However desirable it may have been that the road should be brought to a higher degree of completeness than that contemplated and required by the act, we were not referred to any statute which made the question of its completion dependent on the judgment or action of the Attorney-General, or vested him with any control over the action of the claimant in the premises. Hence, when the claimant, in pursuance of his requirement, executed those papers, its act in so doing was purely voluntary. Not only so, but the execution of those papers was directly in the claimant's interest, and against that of the defendants. It was, on the one hand, the interest of the government to begin, as soon as it lawfully could, the application of the 5 per cent. of the net earnings of the road to the payment of its bonds; while, on the other hand, it was the interest of the claimant to postpone to the latest possible day the payment of the 5 per cent., amounting the first year after the completion of the road to more than $125,000, and regularly increasing until, in the fifth year, it grew to more than $345,000. Whether the claimant was prompted by this large pecuniary interest to sign those papers does not appear by direct proof; but presumably it understood its interest, and saw that through the operation of those papers the time of the beginning of the 5 per cent. payment might be posponed, and well knew that every day's postponement was for its direct and large benefit. In point of fact, it was not until the 18th of November, 1874, that the President formally terminated the suspension of patents and ordered the issue of them for all

the lands to which the claimant had become entitled. And it is claimed that this action of the President was decisive of the question of the completion of the road, and of the time when the computation of the 5 per cent. payment should begin. This position, in our judgment, cannot be maintained, for the following reasons:

126 1. The time of the completion of the road was to be determined in the way prescribed in the claimant's charter, and in that way alone.

2. It was, therefore, wholly incompetent for the claimant, by its own sole act, to prescribe or authorize some other way to that end.

3. The papers in question were no agreement on the part of the government to submit the question of the time of completion of the road to the decision of the President, but only a voluntary agreement to that effect on the part of the claimant.

4. That agreement of the claimant did not and could not have, in law, any effect whatever to vest a power in the President which was not vested in him by law.

5. Therefore, when the President, in 1874, undertook to declare the completion of the road, he simply performed an act which, so far as it was adverse to the United States, was without legal authority, and therefore void.

6. Hence, if the declaration of the President, in 1874, fixed the time of the completion of the road at a later day than that at which it had before been fixed in the way prescribed by the act, then that declaration was wholly destitute of legal effect, as against the United States.

This brings us directly to the great controlling point of the case, namely, When was the road completed and equipped, within the meaning of the act? In the light of the views previously expressed there is but one answer to this, and that is, that when the last section of the road was reported by the commissioners, and accepted by the President, as completed, then the Union Pacific Railroad was completed within the meaning of the act.

When that last report was made, the legal question was not whether the road was then up to the condition of "ultimate full completion," or to that of "ultimate completion," whatever either phrase might be held to mean, but whether it had been "completed and equipped as required by the act" to entitle the claimant to lands and bonds. When reported as having attained that condition of completion, and the report was accepted by the President, the question of completion was finally settled and determined, unless it could be impeached for fraud.

Applying these views, we consider that the road was completed as a whole, within the meaning of the act, on the 15th of July, 1869; for on that day the President of the United States accepted the report of the commissioners on the westernmost and last section of the road, which report represented it "as ready for present service, and completed and equipped as a first-class railroad."

Nevertheless, we are of opinion that that date should not be adopted as the basis of the judgment of the court, for reasons now to be stated.

On the 10th of April, 1869 (16 Stat. L., 56), Congress passed a joint resolution, the second section of which is as follows:

"Sec. 2. That, to ascertain the condition of the Union Pacific Railroad and the Central Pacific Railroad, the President of the United States is authorized to appoint a board of eminent citizens, not exceeding five in number, and who shall not be interested in either road, to examine and report upon the condition of, and what sum or sums, if any, will be required to complete each of said roads, for the entire length thereof, to

the said terminus as a first-class railroad, in compliance with the several acts relating to said roads." * * *

In pursuance of that provision five commissioners were appointed, who examined the roads, and, on the 30th of October, 1869, made report thereon, which is given in full in the finding of facts, and from which we extract the following two paragraphs:

"In the opinion of the commission, the requirements of the law will be satisfied, and the designs of Congress carried out, if the roads be properly located, with judicious grades; have substantial road-beds of good width; ballasting which, with proper care, shall be able
127 to keep the track in good condition throughout the year; permanent structures for crossing streams, good cross-ties, iron and joint fastenings; sufficient sidings, water-tanks, buildings, machinery, and adequate rolling-stock—the more important machine-shops and engine-houses being of masonry—and the commission is glad to be able to say that, in its opinion, while some expenditures still need to be made, these two roads are substantially such roads to-day. The expenditures needed for completion will be given in detail for each road.

"This great line, the value of which to the country is inestimable, and in which every citizen should feel a pride, has been built in about half the time allowed by Congress, and is now a good and reliable means of communication between Omaha and Sacramento, well equipped, and fully prepared to carry passengers and freight with safety and dispatch, comparing in this respect favorably with a majority of the first-class roads in the United States."

The report, nevertheless, estimated that an expenditure of $1,586,100 would be necessary for the completion of the Union Pacific Railroad.

Notwithstanding that estimate, the Secretary of the Treasury, on the 6th of November, 1869, ordered the issue of subsidy bonds due to the claimant on the westernmost and last section of the road; and in the presentation of this case the government has treated that day as the one from which, for the purposes of the case, the completion of the road should be dated. We, therefore, hold that to be the day of the completion.

It remains to ascertain whether, after that day, there were net earnings of the road, and; if so, what amount.

In deciding what are net earnings, we take: 1, The gross receipts of the claimant from operating its road and telegraph line; and 2, The gross receipts from the rents of buildings, or parts of buildings, belonging to the road; and from the aggregate of those two items we deduct the expenses of operating the road and line to earn the first description of receipts; and the remainder constitutes the net earnings.

The Supreme Court of the United States having, in Union Pacific Railroad Company *vs.* Hall (91 U. S. R., 343), decided that the bridge constructed by the claimant over the Missouri River at Omaha is a part of its road, the receipts therefrom and the expenses of operating it are brought into our computation hereinafter set forth.

In ascertaining the expenses of the road, we exclude all amounts paid on construction account, because the claimant is not, in our view, entitled to charge them against earnings until it shows that its construction fund was exhausted; and no attempt was made to show that. On the contrary, it must, as we conceive, be certain that that fund has not yet been exhausted.

The claimant's construction fund consisted of four items, viz: 1. Capital stock; 2. First-mortgage bonds; 3. United States bonds; and 4. Lands received from the United States.

From Senate Report No. 111, Forty-fifth Congress, second session, we ascertain that the amounts of the first three of these items were as follows:

1. Capital stock paid in	$36,762,300
2. First-mortgage bonds	27,232,000
3. United States bonds	27,236,512
Total	91,230,812

In addition to this sum, the land-grant to the claimant was about 12,000,000 acres, of which, up to July 1, 1874, only 3,445,781 acres had been patented to the claimant, leaving nearly three-fourths of the entire grant not then fully available for any purpose of expenditure, and therefore certainly not used in construction.

But of the quantity patented the claimant had, up to that date,
128 sold only 1,013,774 acres, leaving nearly 11,000,000 acres not yet, at that time, used for any purpose of construction.

As the claimant's demand comes down only to December 31, 1875, we deem ourselves justified in holding that on that day there must have been millions of acres of those lands still undisposed of by the claimant, the proceeds of the sales of which would more than suffice to meet all accruing outlays for construction. While that condition existed, we are clear in the opinion that the claimant had no legal right to charge any construction expense whatever against its gross earnings, so as thereby to diminish the amount of earnings out of which it should apply five per cent. toward payment of the bonds of the government.

In ascertaining the expenses, there is another very large item of the claimant's expenditures which we do not consider properly chargeable against its earnings, namely, interest paid on its floating and bonded debt. This cannot, in our judgment, be regarded as an expense of operating the road.

On the same ground we disallow the following items:

1. Expenses of land and town-lot department.
2. Taxes on lands and town lots.
3. Premiums on gold to pay coupons.
4. Requirements of sinking funds.
5. Premiums on Omaha bridge bonds redeemed.

In ascertaining the gross earnings of the road, we rest primarily upon the table of earnings set forth in finding XVIII, with the following deductions:

1. Fifteen per cent. from item 7 in each year.
2. From item 12, in the year 1869–'70, the sum of $23,400, being dividends from stock of Pullman Pacific Car Company, as set forth in the second table of earnings in finding XVIII.

In ascertaining the expenses, we take the table of expenses set forth in that finding, and make deductions therefrom as hereinafter indicated.

Having thus stated our views of what legitimately constitute earnings and expenses, we tabulate the result, year by year, from November 6, 1869, to November 5, 1875, both inclusive, as follows:

1869–'70:

Gross earnings, as per findings		$8,125,212 40
Deduct therefrom—		
15 per cent. of item 7	$72,358 12	
Pullman car dividends in item 12	23,400 00	
		95,758 12
Actual gross earnings		8,029,454 28
Total expenditures, as per findings	10,287,954 25	

Deduct therefrom—			
Printing bonds in item 13	10,339 76		
Items 17 to 30, inclusive	4,951,848 52		
		4,962,188 28	
			5,325,765 97
Net earnings for the year			2,703,688 31
1870–'71:			
Gross earnings, as per findings			7,563,006 59
Deduct 15 per cent. of item 7			54,321 68
Actual gross earnings			7,508,684 91
Total expenditures, as per findings		7,942,755 88	
129 Deduct therefrom—			
Printing bonds in item 13	$1,500 00		
Items 17 to 30, inclusive	4,245,440 96		
		$4,246,940 96	
			$3,695,814 92
Net earnings for the year			3,812,869 99
1871–'72:			
Gross earnings, as per findings			8,659,031 66
Deduct therefrom 15 per cent. of item 7			60,538 78
Actual gross earnings			8,598,492 88
Total expenditures, as per findings		9,572,784 15	
Deduct therefrom items 17 to 30 inclusive		4,671,634 66	
			4,901,149 49
Net earnings for the year			3,697,343 39
1872–'73:			
Gross earnings, as per findings			10,666,117 26
Deduct therefrom 15 per cent. of item 7			69,860 10
Actual gross earnings			10,596,257 16
Total expenditures, as per findings		9,968,854 70	
Deduct therefrom—			
New stations in item 1	6,909 98		
Items 17 to 30 inclusive	4,642,866 86		
		4,649,776 84	
			5,319,077 86
Net earnings for the year			5,277,179 30
1873–'74:			
Gross earnings, as per findings			10,834,651 49
Deduct therefrom 15 per cent. of item 7			76,004 77
Actual gross earnings			10,758,646 72
Total expenditures, as per findings		9,809,105 08	
Deduct therefrom—			
Tenements and new stations in item 1	19,806 73		
Engines, &c., in item 2	26,133 68		
Cars from item 3	3,600 00		
Laramie rolling-mills in item 4	43,716 01		
Printing bonds in item 13	6,579 10		
Items 17 to 30 inclusive	4,593,404 03		
		4,693,239 55	
			5,115,865 53
Net earnings for the year			5,642,781 19

1874-'75:

Gross earnings, as per findings			12,481,204 48
Deduct therefrom 15 per cent. of item 7			98,646 28
Actual gross earnings			12,382,558 20
Total expenditures, as per findings		10,628,208 16	
Deduct therefrom—			
Tenements and new stations in item 1	99,819 10		
Engines., &c., in item 2	75,727 83		
Cars, &c., in item 3	206,930 36		
Laramie mills, item 4	149,859 30		
Items 17 to 30, inclusive	4,631,496 86		
		5,163,833 45	
			5,464,374 71
Net earnings for the year			6,918,183 49

130 RECAPITULATION.

	Net earnings.	Five per cent.
Year ending November 5, 1870	$2,703,688 31	$135,184 42
Year ending November 5, 1871	3,812,869 99	190,643 49
Year ending November 5, 1872	3,697,343 39	184,867 17
Year ending November 5, 1873	5,277,179 30	263,858 96
Year ending November 5, 1874	5,642,781 19	282,139 06
Year ending November 5, 1875	6,918,183 49	345,909 18
	28,052,045 67	1,402,602 28

Before declaring the judgment of the court, the question whether the claimant is legally bound to pay interest on the annually accrued 5 per cent. must be considered.

By the act of 1862, the claimant is bound to repay to the defendants the amount of the bonds issued by them to it, together with all interest thereon, which shall have been paid by the United States.

Toward providing an accruing fund for such repayment, the act authorizes the government to retain one-half of the compensation earned by the claimant for services to the government; and requires the claimant, in addition thereto, after its road is completed, to pay annually at least 5 per cent. of its net earnings.

In United States vs. Union Pacific Railroad Company (91 U. S. R., 72), it was decided by the Supreme Court of the United States that the claimant is bound to pay those bonds and the interest thereon only at the maturity of the bonds, thirty years after their date.

Whatever, therefore, of compensation for services rendered might be retained by the government, or of 5 per cent. of net earnings might be paid to the government, is to be applied, not in præsenti, but to be held for application at the maturity of the bonds, toward the payment of the principal and interest thereof.

As the act does not require the government to allow the claimant interest on the compensation retained by it, nor require the claimant to pay interest on the 5 per cent. of net earnings, from the expiration of each year in which they accrued, we are of the opinion that it was not the intention of the legislature to require the payment of interest on either side; and therefore that no interest should be allowed against the claimant on the counter-claim.

The defendants, therefore, can recover only the 5 per cent. accrued, as above stated, viz, $1,402,602.28, less one-half of the amount of compensation for services rendered by the claimant, viz, $593,627.10; and

for the balance of $808,975.18 judgment will be rendered in favor of the defendants.

XIV.—*Concurring opinion.*

DAVIS, J.:

I acquiesce in this judgment, in order to put the case in a shape to be taken to the appellate court, which both parties desire to have done. I agree in the disposition of the principal question at issue, but for different reasons from those expressed by the chief justice. I dissent from the conclusions of my associates on minor points, which involve in the aggregate large sums of money. The magnitude of the amounts at stake justifies an endeavor to state, as nearly as I am able, the points of difference, and the reasons for my opinions on the whole case.

The United States hold a double relation toward the Union Pacific Railroad Company. On the one hand, as its sovereign, they are the fountain of its corporate franchises; on the other hand, as a great land-owner, they have contracted with it for the construction of a
131 first-class railroad between two widely separated points of their territory. This suit concerns only their relations as contractor.

The provisions of the contract are few and simple. They may be found in the acts of July 1, 1862, and July 2, 1864, enacted by the defendant, and both formally accepted by the claimants.

The claimants agreed to construct a first-class railroad and a telegraph for a distance which was subsequently ascertained to be 1,038.68 miles, the work to be done in sections, and the whole to be completed before July 1, 1874.

The defendant agreed as each section was completed and accepted in a manner to be hereafter more particularly set forth, to deliver to the claimants patents for a certain quantity of land, and also its own bonds for specified amounts; the lands to be the claimants' property; the bonds to be a loan of credit to be redeemed by the claimants.

The claimants agreed that one-half of the revenue derived from service for the defendant should be applied to the redemption of such bonds and interest; and also that after completion of the road, five per cent. of its net earnings should be annually applied to the same object. They further agreed to transmit dispatches and transport mails, troops, munitions of war, supplies, and public stores, for the defendants whenever requested, and always to give the government preference in service.

The issue and delivery of the subsidy-bonds were to constitute ipso facto a mortgage on the railroad and telegraph; but the claimants were to be at liberty to make a first mortgage on their road to an amount equal to the proposed subsidy-bonds, and to be issued in like manner as sections of the road should be completed; and the statutory mortgage, and the lien of the United States bonds, were to be subordinate to the said first mortgage, except as to the provisions relating to the transmission of dispatches and the transport of mails, troops, munitions of war, supplies, and public stores.

Under this contract work was begun in the autumn of 1865. The President accepted the first section with deficiencies of construction, which the company bound itself to remedy. He ordered the subsidies of both kinds to issue without waiting till the deficiencies should be supplied.

A board of experts had been organized in order to secure a uniform standard of construction for adoption, as sections should be presented for acceptance. Before the second section was presented this board made its report, recommending that sections should be accepted in many

respects incomplete, as measured by the statutory standard of a first-class railroad, and that the sections should be brought up to standard after acceptance. The President approved the report, and ordered directors and commissioners to guide themselves by it as a standard in directing or accepting work.

The various acts and measures which made the present contention possible grew out of this report, and of the action of the President upon it. The course which it advised, and which was approved and followed until the whole road was open for traffic, is now assailed as a violation of law.

If the proceedings had any warrant in the statute it is to be found in the seventeenth section of the act of 1862, providing for a retention of bonds as a guarantee for completion of the road—a provision repealed in 1864, but showing, so far as it bears on the question, a possible contemplation by Congress that sections would be accepted in an incomplete state. It can at least be said for them that under their operation a first-class railroad was constructed and equipped between the
132 Missouri and the Pacific within three months of the period named in the statute, without weakening the company's statutory obligations to the government. These considerations, however, can be urged in the forum of public opinion more properly than in a judicial tribunal, where acts and events are measured by rules of law.

The work went on rapidly after it was once fairly begun. The proposed first mortgage was executed, and first-mortgage bonds were from time to time issued and sold. In September, 1868, twenty-seven sections of the road, amounting to 760 miles, had been accepted by the President, and the issue of the subsidies thereon had been ordered. Much of the work on these accepted sections was far below the requirements of the statute. Under these circumstances the opinion of the Attorney-General was taken as to the duties and responsibilities of the Executive.

Attorney-General Evarts answered: "I entertain no doubt that the mode of procedure was a competent and useful discharge of the executive duty in the premises. * * * But upon the same reasons, and in pursuance of the same method hitherto followed, I am of the opinion that it is entirely competent to the executive * * * to provide for a revision of the work in the particulars in which a provisional completeness of successive sections was accepted, subject to an obligation on the part of the companies to make good as far and as fast as might be what needed to be subsequently supplied." In conformity with this suggestion, the claimants, in February, 1869, deposited with the defendant $1,600,000 of their first-mortgage bonds as security for the completion of the road according to law, and agreed that all their land patents might be retained for the same purpose. This was done by an instrument which I shall have occasion to consider hereafter.

On the 10th of the following April, Congress, by joint resolution, authorized the President to appoint a board of eminent citizens to visit the road and report what amount would be necessary to secure its completion according to law. They also directed the President, in order to secure such completion, to retain subsidy bonds enough for that purpose, or if that were impracticable, to require the company to return enough bonds to make, with the unissued bonds, the requisite amount; or, if both plans were found impracticable, to authorize the Attorney-General to institute a suit to protect the interests of the United States, and to insure the completion of the road.

On the 10th of May, 1869, the last rail was laid, and it became possi-

ble for trains to run over the whole road. On the 13th of the same month, a sworn certificate by the company's officers of the completion of the last section, and also of the road as a whole, was laid before the President. On the 15th of the following July, he accepted the section and ordered the issue of the subsidies, but nothing was done by the departments on this order until November, for reasons which clearly appear in the findings of fact.

There was a difference between the Central Pacific and the Union Pacific about the point of junction. Until that difference should be arranged, the distribution of the subsidy for a few miles of the through line on the one side or the other of the point of junction was uncertain. The Secretary of the Interior therefore recommended the President to authorize the bonds and patents due on account of the last section to issue only "after full investigation of the respective claims of the two companies," and to require the company to deposit with the Secretary of the Treasury the security for the ultimate completion of the road which had been recommended in the Secretary's letter of
133 May 27, 1869. In that letter the Secretary had designated the first-mortgage bonds of the company as the desired security.

The Secretary's letter of the 27th May, as well as that of July 15, was written after the joint resolution of the 10th April became law. We must therefore suppose that his recommendations were intended to be in harmony with the expressed views of Congress, and we are warranted in assuming that neither the first nor the second modes of obtaining sufficient security were practicable. Instead of resorting to the third mode, and obtaining security as the possible result of a successful lawsuit, the Secretary advised availing of the $1,600,000 first-mortgage bonds already in the government's possession. Before the following November events took place which greatly affected the security which he proposed.

In the first place, the board of eminent citizens reported that constructive work to the amount of $1,586,100 remained to be done in order to bring the road and equipment to standard. This gave a measure for the amount of security to be taken.

In the next place, the point of junction of the two roads was so far settled that it became apparent that the Union Pacific road would be shortened some forty miles. It resulted from this that there was a large overissue of first-mortgage bonds, and that the bonds deposited with the government as security were valueless.

It was therefore decided that these bonds should be canceled, and that the government should look to the land-patents for security; and it was further decided that one-half the remaining patents would be ample security for the sum named in the report of the board of eminent citizens, and that the other half might be delivered, and an executive order was issued from the Department of the Interior to that effect.

This order continued in force until the autumn of 1874. The claimants repeatedly asked to have it rescinded or modified, but their requests were met by refusals to do so until an examination, to be made at their request, should show that the road and equipment were completed up to the statutory standard.

In the summer of 1874 they asked to have such an examination made. The commissioners appointed for the purpose reported that the deficiencies found in the summer of 1869 had been more than supplied, and that the road was completed as a first-class road on the 1st day of October, 1874. The President thereupon, on the recommendation of the

Secretary of the Interior, revoked the order of November, 1869, and directed that the suspended land-patents should be issued.

At the trial each party introduced evidence as to the time of the completion of the road, and each argued at length the bearing of the evidence upon the decision of that question. In my judgment that question was left by statute for the President to decide at the time of the occurrence of the completion. It was not to be settled in the future by evidence aliunde. The statute empowered the President to determine, section by section, on evidence of a particular and prescribed character, when each was completed, and on each decision he was authorized to issue the land and bond subsidies for the particular section. In practice he accepted incomplete work; but this did not modify the combined operation of the acceptance of the road and of the issue of the subsidies upon the agreement to pay the five per cent. of the net earnings. The statute contemplated that, when the last section should be accepted and the last subsidies issued, the road would be complete as a money-earning machine, and the obligation to pay the five per cent. of net earnings would begin.

134 On the other hand the statutory contract bound the defendant to furnish, or to be ready to furnish, the subsidies, in order to entitle it to the payment of the five per cent. The sequence in which the acts were to be performed shows this: First, the claimants were to construct and equip a section of the road; next, they were to present it for acceptance; next, the president, after examination by commissioners, was to decide whether the section was "completed and equipped in all respects as required by the act"; next, the land-patents for the section were to issue from the Interior Department and the subsidy-bonds from the Treasury; finally, after these things were done in detail, section by section, five per cent. of the net earnings were to be set aside when the road should be completed as a whole. The issue of the last subsidy and the completion of the road were to take place simultaneously, and the obligation to set aside five per cent. of the net earnings was not to begin until after the occurrence of these two simultaneous events.

If we quit this solid ground there is no sure foothold for the construction of this contract.

We cannot say that the obligation to pay the five per cent. would arise on the completion of the road if no subsidy were furnished, since the payment is intended as a contribution towards the redemption of a portion of the subsidy.

No one contends that it arose when the last rail was laid, on the 10th May, 1869, nor when, on the 13th May, the president of the company made oath that the road was completed according to law.

If the obligation sprang solely from the President's acceptance of the road, it had no reference to the outstanding amount of the loan subsidy, so long as something was outstanding and was equally obligatory whether $2,700 or $27,000,000 were issued.

But if it was to spring from the completion of the road, and the concurrent readiness to issue all the promised and unissued subsidy, which is the best construction of the statute, then we must remember that the issue of the land-subsidy was made by law as imperative on the government as the issue of the loan-subsidy. Consequently the expectation of the performance of the defendant's promise respecting both classes of subsidy, furnished the moving considerations for the claimant's promise to set aside the five per cent., and the government could not, under the statutory contract, enforce upon the company a performance of its

agreement to do an act that was to be subsequent in time to the receipt of the subsidies, without showing either a readiness on its own part to deliver all the undelivered subsidies, or a waiver on the part of the company to insist upon their delivery at the time and in the manner provided by the contract.

Now the government on the one hand certainly did not fulfill its original engagements respecting the land-subsidy until October, 1874; but on the other hand we have seen that its failure to do so was caused by the making of a new engagement between it and the company. On the 12th February, 1869, the officers of the latter executed an authorized instrument in which this language was used: "The Union Pacific Railroad Company, having been requested by the Government of the United States * * *, as security for the due completion and equipment of its road * * *, to leave the lands given to the said company by act of Congress * * *, without taking out patents for the same, until the President shall be satisfied, upon proper examination of the road, its structure and equipments, that the same have been completed according to the provisions of law * *; now this is to declare that the
135 said company assents to the aforesaid requirements in respect to the lands given to the said company as aforesaid."

At a later date the government consented to relinquish one-half of the suspended patents, and to hold the other half only for the performance of the specific work recommended by the board of eminent citizens, constituted under the joint resolution of April 10. In that step there was certainly nothing that weakened the force of the company's consent to the reservation.

The recommendations of the board of eminent citizens contemplated the expenditure of upward of $1,000,000 upon sections which had been accepted, and for which the order for the entire subsidies had been made. These sections were therefore "completed" within the meaning of the term as used in the 6th section of the act of 1862. The obligation to contribute toward the five per cent. so soon as the remaining sections should be "completed" had attached to them. Therefore, as to all such sections, the statutory contract was abrogated by mutual consent on the 12th February, 1869, so far as related to the unissued land-patents, and the government became thereafter the custodian of the lands under a new agreement, and for a new purpose.

It is contended that the President had no power to make this new agreement, and that his action in withholding the land-patents under it was illegal and void. I do not think so. The action of President Johnson, in February, 1869, was justified by the condition of the unfinished road at that time; and the subsequent action of President Grant in relinquishing half the patents which were held as security was a compliance in spirit, if not in letter, with the requirements of the joint resolution of Congress of April 10, 1869, and was a wise act of protection to the government, and a liberal act as regarded the company.

We are now in a position to consider the President's action, and to ascertain the day which he fixed as the date of the completion of the road.

There is no dispute about the first 38 sections, 1,000 miles in all. They were accepted, and the order was made for the issue of the subsidies before February 12, 1869, and it was to them that the provisions of that agreement immediately applied.

There remained then only 38.68 miles to be completed in order to entitle the government to the 5 per cent. We have already seen that the company certified on the 13th May that this section was completed, and

that the President on the 15th July accepted it, and ordered the bond-subsidy to be issued. The land-subsidy had been disposed of by the agreement of the previous February.

The President's order to issue the bond subsidy for this section was to take effect upon the happening of circumstances which were within the claimant's control. The dispute with the Central Pacific Company was theirs, not the government's. The delay which it caused in the issue of the subsidy does not defer the defendant's right to the payment of the 5 per cent. of the net earnings. This accrued on the 15th July, when the President rendered his decision that the road was completed, and ordered the subsidies to issue for it, and when the road consequently was completed in the eyes of the law.

In order to ascertain what are the net earnings upon which the computation of the percentage is to be made, we must first settle what are to be taken as gross earnings.

The claimants carry on two distinct branches of business. They are common carriers, and they are large landed proprietors. With
136 the latter branch of their business we are not concerned, since the statute requires the payments to be made out of the net earnings of the road.

Confining ourselves to the former branch, the claimants maintain that the gross earnings of a corporation comprehend all its gains from the legitimate exercise of all direct and incidental powers conferred upon it by its charter.

A railroad operated in connection with other roads is sure to bring into its owners' hands moneys belonging to other companies for whom it collects freights at the stations of arrival on its own road, or for whom it sells passenger tickets. Assuming that the word "gains" is used in the claimants' proposition in the sense of receipts on its own account, the statement commands my assent; but it is also true that this particular corporation cannot set up against the United States, the grantor of its franchises, that it has corporate gains derived from the exercise of powers not conferred upon it by its charter. Income from tenement houses, from hotels, from Pullman-car stock, from the rent of engines and cars, for services performed for other roads, and from investments outside of transportation, but not connected with the other branch of business, are to be regarded as ancillary to the claimants' exercise of their franchises as common carriers, and as necessary to the use of their road in the unsettled districts which it traverses.

The cost of earning gross earnings must be deducted from them in order to ascertain what are net earnings. This includes, not only the actual expenses of transportation, but also general corporate expenses, such as salaries of officers, wages of employés, taxes, assessments, insurance, law expenses, losses and damages to persons and property, and other similar charges, and, above all, the cost of maintaining the road, the plant, and the entire property, so that at the close of the year they shall be in as good condition as at the beginning.

The claimants further maintain that interest on loans and obligatory contributions to sinking funds, or to the redemption of the subsidy loan, are also proper to be deducted.

This proposition confounds two things which are quite distinct in themselves—the net earnings of the property and the net income of the owners of the property.

Regarding the property as an entity, the moneys which go into its construction, whether stock or debt, are to be regarded as capital. Its net earnings (that is, the net earnings of the property, not of the capital

invested in it) are to be ascertained by the rule already laid down. After they are ascertained, their application depends upon the respective priority of rights of the different classes of capital which went into the construction of the property. Loan capital as creditor has priority over share capital as debtor and as the owner of the property. So, too, the higher classes of loan capital stand prior in right to the lower classes. But, though the just claims of loan capital must be satisfied before share capital can receive anything, it is wrong to say that they must be satisfied before the net earnings of the property itself can be ascertained.

The claimants also contend that the tenth section of the act of 1864 postpones the payment of the five per cent. until the payment of the first-mortgage debt and interest. This contention cannot be maintained. It is true that the section referred to recognizes that the United States has a lien upon the property to enforce both the payment of the subsidy bonds and the rights reserved by the sixth section of the act of 1862. The rights of the defendant to the five per cent. is clearly subordinated by it to the rights of the first-mortgage bondholders. If net
137 earnings will not satisfy first-mortgage interest and the five per cent., the latter must give way to the former. When the principal of the mortgage debt matures, it will be a charge on revenue prior to the five per cent. But, as between the government and the company, there is no change in the definition of net earnings; no enlargement of the rights of the company; no discharge of the right of the government to claim and receive the five per cent., if it is earned, and if it is not immediately applicable to the extinguishment of mortgage debt or interest.

Some expenditures for "station-buildings," "tenement-houses and hotels," "engine-equipment," "tanks and water-tanks," "new shops and machines," "car-equipment," and "Laramie rolling-mills," are said to be improperly charged to earnings.

Undoubtedly new construction, theoretically, should come from capital. Practically it is often difficult to separate new from old. A station is rebuilt on a larger scale; an iron bridge replaces a wooden bridge; an old car or locomotive is rebuilt; a steel rail is substituted for an iron rail. Many prudent managers think it best not only to make such "construction" as this out of earnings, but even to resort to that source for the increase demanded by the ordinary growth of traffic rather than swell capital account by augmenting the funded debt or shares. Such matters are usually left to the discretion of a board of directors. The expenditures objected to certainly increased the value of the security which the government holds for the ultimate retirement of the loan subsidy. The organic law of the corporation placed representatives of the government in the direction to guard the interests of the United States. In the absence of complaint from them I do not think this court should impose upon the company an inflexible rule which is often practically opposed to sound and economical administration.

The items relating to the Omaha bridge are in dispute, and some of them are rejected, in the judgment of the court. The bridge was constructed under authority contained in the ninth section of the act of 1864. The act of 1871 authorized the claimants to contract a mortgage debt for its construction. The mortgage failed to realize enough to meet its cost, and the deficit (about $28,000) was met from earnings. The bridge accounts are now carried into the general operations of the road. Although technically a separate property, the bridge is practically operated as a part of the claimants' road, and is, in fact, necessary to it. If the principles which I have laid down are correct, its receipts should form a part of gross earnings, and the cost of its operation a part of

the expenditures to be deducted from gross earnings. The small outlay in its construction not having been objected to by the government directors is to be treated as legitimate. The interest paid on its mortgage is to be treated as the interest on the other funded debt of the company.

Some charges for the printing of corporation bonds were objected to. On the principles laid down they are fairly within the corporate expenses which are chargeable to earnings. On the other hand, sundry contested expenditures for expenses of town lots and taxes on land and town lots are properly held by the court not to be chargeable to the earnings of the road.

The claimants are bound to apply the 5 per cent. of the net earnings of the road annually; that is to say, on the recurring anniversary of the day of the month on which the road was completed. The defendant maintains that the obligation to pay the percentage began on the 6th November, 1869, and makes a rest annually between November 5 and November 6 in the tables which it furnishes. I agree that the defendant can waive the percentage between the 15th July and the
138 6th November, but I do not agree that the road was completed on the latter date. We are warranted, on the pleadings in this suit, in giving judgment from and including the 6th November, 1869.

On the principles which I have laid down the respective annual amounts for which the defendants would be entitled to judgment are the following:

For the year ending November 5, 1870	$94,606 48
1871	189,942 09
1872	163,000 32
1873	258,002 77
1874	271,871 74
1875	324,084 15
Total	1,301,407 55

I agree with my associates that no interest should be allowed on these sums.

It is conceded by the government that at the commencement of this suit the claimants had earned in the transportation of mails, troops, munitions of war, and supplies, and in the transmission of dispatches, $1,187,254.21, none of which has been paid. In this suit the claimants are entitled to recover one-half that amount, $593,627.10. That amount should be deducted from the defendant's counter-claim, and the defendant, in my opinion, should have judgment for $707,880.45.

This result differs from that reached by my associates by $101,194.73. For reasons already given I surrender my own convictions, and I concur in forming the judgment of the court.

139 XV.—*Final judgment of the court.*

At a Court of Claims held at the Capitol in the city of Washington, on the eleventh day of June, A. D. 1878, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the defendants, and do order, adjudge, and decree that the United States do have and recover of and from the said The Union Pacific Railroad Company the sum of eight hundred and eight thousand nine hundred and seventy-five dollars and eighteen cents ($808,975$\frac{18}{100}$)

140 XVI.—*Application of claimant for and the allowance of an appeal.*

THE UNION PACIFIC RAILROAD COMPANY
vs.
THE UNITED STATES. } No. 10899.

From the judgment rendered in the above-entitled cause on the eleventh day of June, 1878, in favor of the United States upon its counter-claim filed in said cause, as well as from the judgment of said court upon the demurrer heretofore filed by the Union Pacific Railroad Company to said counter-claim, the Union Pacific Railroad Company makes application for and gives notice of an appeal to the Supreme Court of the United States, by its counsel and attorney.

S. BARTLETT.

Filed June 13, 1878.

AT CHAMBERS, *June* 13, 1878.

Allowed.

C. D. DRAKE,
Chief Justice.

141 In the Court of Claims.

THE UNION PACIFIC RAILROAD COMPANY
vs.
THE UNITED STATES. } No. 10899.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the findings of fact by the court, and the conclusion of law thereon; of the requests of the claimant and of the defendants for additional findings of fact and the rulings of the court thereon; of the opinion of the court and the concurring opinion; of the final judgment of the court; of the application of claimant for, and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this twenty-fourth day of June, A. D. 1878.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 736. The Union Pacific Railroad Company, appellant, vs. The United States. Court of Claims. Filed 19th July, 1878.

Supreme Court of the United States.

OCTOBER TERM, 1878.

No. .....

THE UNION PACIFIC RAILROAD CO.

APPELLANT,

vs.

THE UNITED STATES OF AMERICA.

Mr. Bartlett's Brief for the Appellant.

BOSTON:
1878.

Supreme Court of the United States.

OCTOBER TERM, 1878.

THE UNION PACIFIC RAILROAD COMPANY,

APPELLANT,

vs.

THE UNITED STATES OF AMERICA.

Brief for the Appellant.

The Union Pacific Railroad Company seeks in this cause to recover compensation for transportation services performed for the Government.

The amount due for this service is fixed and agreed to by stipulation filed in the Court of Claims.

There was filed by the Government a counter-claim, based on the sixth section of the Act of 1862 (of which Section a copy is annexed, Appendix, No. 1, p. 35), for five per cent. of the net earnings of the Company. To this counter-claim the Company demurred, on the ground that the Government has by its contract, contained in the charter, expressly stipulated that of the sums earned by the Company for transportation services, one-half only shall be applied toward the extinguishment of the ultimate liability of the Company for the subsidy bonds issued to it, and thus that the attempted set-off is repugnant to the contract of the parties.

The demurrer was overruled by a divided Court without any statement of the grounds of its decision, but with leave to plead over, and the Company reserving its rights pleaded to the merits of the counter-claim.

By a Court (divided as to the quantum due) the counter-claim was sustained, and the soundness of its conclusions of law and

of the principles adopted by it, is drawn into controversy by this appeal.

It is thought that, to present more clearly the questions involved, the assignment of errors may properly be stated at the close of the Brief.

I.

The first question for discussion is, Do the Acts of Congress which constitute the charter of the Company, by necessary or by just and reasonable construction, contain a clear stipulation that as to one-half of the sums earned by transportation the same shall not, at any time or in any form, be applied by the Government to provide in anticipation for the reimbursement of its subsidy bonds issued to the Company, but shall be paid to it as the same accrue; and does the acceptance of the charter constitute this stipulation or contract one founded on valuable considerations?

The sections of the several Acts from which the answer to this question is to be derived are printed in the Appendix to this Brief, and are as follows: —

1. Act of July 1, 1862, Section 6, Appendix No. 1, p. 35. Vol. 12, Stat. at Large, p. 489.
2. Act of July 2, 1864, Section 5, Appendix No. 2, p. 35. Vol. 13, Stat. at Large, p. 356.
3. Act of March 3, 1871, Section 9, Appendix No. 3, p. 36. Vol. 16, Stat. at Large, p. 525.
4. Act of March 3, 1873, Section 2, Appendix No. 4, p. 36. Vol. 17, Stat. at Large, p. 508.

The first provision that touches the question is that contained in the sixth section of the Act of 1862, (Appendix No. 1,) which, after declaring the services for the Government to be performed by the Company, and that the same shall be paid for at rates of compensation which shall not exceed the rates paid by private parties, thus provides: "All compensation for services rendered for the "Government shall be applied to the payment of said bonds and "interest until the whole amount is fully paid."

It should be noted as to this section, that its whole purpose is, (1), to define the service to be performed for the Government and the measure of compensation for that service, and, (2), to

require that all this compensation, together with five per cent. of the future net earnings of the Company, *shall be applied, by way of anticipation*, toward the payment of both the interest and the principal of the subsidy bonds, the period for the maturity of both which was fixed by the Act to be the maturity of those bonds.

The value of noting that such is the purpose of the section, is its force in interpreting the amendment thereof, to be next considered, and its aid in finding whether it was the intent of that amendment to relieve the Company partially from such anticipation of payment *during the entire period in which the bonds were running to maturity.*

The amendment referred to forms part of the fifth section of the Act of 1864 (Appendix, No. 2, p. 35), and is as follows: "and only one-half of the compensation for services rendered for "the Government by said companies *shall be required to be applied* "to the payment of the bonds issued by the Government in aid "of the construction of said roads."

Now, this is not a contract *to pay* the Company one-half of the sums thus earned in the service of the Government. That contract to pay and the rates of payment had been distinctly made by the sixth section of the Act of 1862, above referred to. Had it been a mere contract to pay to the Company the half transportation, though a reiteration, it would have said so. On the contrary, the language used is capable of one, and only one, meaning or construction, namely, that of a contract that at *no time* shall the half earnings of the Company "*be required to be applied to the payment of the bonds issued by the Government*" *in anticipation.* If this off-set is allowed they will be so applied.

That such is not only the literal interpretation of the Act but was also the original purpose of the parties is shown:—

1st, From the surrounding circumstances which led to the passage of the amendatory Act of 1864, and from the entire scope and aim of the various provisions of that Act.

2d, From the contemporaneous acts and construction of both parties from 1864 down to 1871, and (with a small interval of attempted misconstruction of the Secretary of the Treasury, corrected by Congress,) down to 1873, when the Act under which this suit is brought was passed.

3d, By the action of Congress contained in that Act of 1871. (Appendix, No. 3, p. 36.)

First. The circumstances under which the amendatory Act was passed, are matter of public history, and as such referred to as properly within the cognizance of the Court in forming and expressing its judgment in the case of the United States *vs.* The Union Pacific Railroad Company (1 Otto, p. 72). Under the original charter this great public enterprise, though entered upon by a limited number of parties, had in substance failed, and was like to be abandoned. In the language of this Court "it languished, and the effect of this was the amendatory Act of 1864." (1 Otto, p. 89.)

By the original charter, as has been seen, among other requirements, was one which directed that all sums earned by transportation services should be applied in anticipation to the subsidy bonds. These services for transportation were not by the Act to begin like the five per cent. after the Road should be completed. It was essential, in the then condition of affairs, that the Road should be used by the Government as fast and as far as completed, and if it be permissible to refer to another part of this record, Finding 22, Record, p. 82, it will be seen that prior to this completion sums (in fact several hundred thousand dollars) had been thus earned by the Corporation by transportation for the Government, and the whole retained and applied, in anticipation, to the bonds and interest. This had been a severe pressure on the resources of this struggling Company.

Now, in substance, the entire provisions of this amendatory Act of 1864 were shaped with the aim to furnish means and inducements to the Company to go on with the construction of the Road, and to draw to it new associates and new capital. The authority to raise money by mortgage, which should take precedence of the Government lien for its subsidies, and be equal in amount to those subsidies, — the magnificent increase of the subsidy bonds, — are a part only of the features of that amendatory Act, which show its purpose to be as stated.

Under such circumstances and with such purposes, a modification of the original contract under which the Company was bound to apply the sums earned in the service of the Government, in anticipation, to protect the ultimate payment of the subsidy bonds and interest, was an obvious mode of relief. It furnished immediate means to prosecute the work by waiver of anticipated payment, cost the Government nothing but the lessening of its

ultimate security, already completely protected as it was by mortgage of the whole Road and property, and under the pressing necessity for relief was an obvious and not an unnatural course. The language of the Act is not only fitted to accomplish this, but is seemingly incapable of any other construction.

Second. As to contemporaneous construction by both parties: It is justly to be inferred from the Act of March 3, 1871 (Appendix, No. 3, p. 36), what is the truth, namely; that after the Act of 1864 down to about the period of the passage of said Act of 1871, both parties had acted upon the ground that the half transportation was to be and was paid to the Company, and that the Secretary of the Treasury had recently attempted to withhold the same as security for the payment of subsidy bonds or interest, and it will be further assumed that after the passage of the Act of 1871 and down to that of 1873 (Appendix No. 4, p. 36) the Secretary of the Treasury acted in conformity to that Act of 1871. The inconsistency of this conduct of the Secretary of the Treasury in seeking to offset only the interest on the bonds with the present claim of the Government that the Road was completed November 6, 1869, and when large sums were and had been due it for the five per cent. of net earnings, will be pointed out hereafter, when the weight and value of the Act of 1871 shall be adverted to.

We next ask attention to that Act of March 3, 1871, which, acted on as it was by both parties, and according, as it does, with the construction of both parties from the outset, is of the gravest weight in this controversy.

When this Act was passed, the Road had been under construction for more than six years. It had (if the Government is right in this case,) been completed on the 6th of November, 1869. There was due the Government for its five per cent. of earnings, a sum, as fixed by the Court of Claims, exceeding $100,000, but whether completed or not, the fact that in the near future the claim of the Government for five per cent. was imminent, was public and well known, and we submit it was referred to in the proviso of the Act.

Turning then to this Act (Appendix, No. 3, p. 36), we find that it purports on its face to correct a misinterpretation of the Secretary of the Treasury of the legal construction and intent of

the section in controversy, and to declare its true construction and intent; that, in accordance with that true construction, it "*directs*" the Treasurer to "pay over *in money* to the Company "one-half the compensation at the rate provided by law for said "services *heretofore or hereafter rendered*," and further that it declares this construction to be "*in accordance with the fifth section* "*of the Act approved July* 2, 1864," and by its proviso declares that the same "shall not be construed to affect the legal rights "of the Government or the obligations of the Companies, except "as herein specifically provided."

What were those legal rights of the Government? Clearly among them was the right of the Government to enforce the payment of the sums then due and to become due for the five per cent., and since the whole purpose of the Act was to compel the payment, at all times, of the one-half compensation for services hereafter as well as heretofore rendered, "*in money*," and to preclude its retention in the Treasury, the purpose of a proviso could only have been not to abridge the right of the Government to recover the five per cent. by its lien on other legal remedies.

Let it not be said that at the date the amendatory Act of 1864 was passed, Congress did not contemplate the existence of net earnings, 5 per cent. of which might be used by way of set-off against services for transportation, and so could not have designed to exclude their set-off. The Road was required to be completed before July 1, 1874 (section 7, Act of 1862). The payment of the subsidy bonds extended from thirty to forty years, according to the dates of their issue. During more than twenty years, therefore, after the completion of the Road, Congress must have anticipated net earnings, on which five per cent. would be payable to the Government, and that during all this period the sums earned by transportation would be accruing.

It can scarcely be necessary, in conclusion, to call the attention of the Court to the fact that, to allow as an offset to sums due for half transportation this claim of the Government, is by a circuit to require *that same half transportation, notwithstanding the fifth section of Act of* 1864, "*to be applied to payment of bonds* "*issued by the Government*," *since this five per cent. is by the Act appropriated solely to the payment of those bonds.*

That the entire legislation in regard to the withholding this half compensation may be placed before the Court, the defendants have printed in the Appendix (No. 4, pp. 36, 37) the second and fourth sections of the Act of March 3, 1873, under which this suit is brought, and it will be seen that they do not assert that under the charter any right to withhold the half transportation and set-off against its interest on the subsidy bonds and the five per cent. of net earnings exists. It merely provides that the question of its existence may be left to judicial determination. (1 Otto, p. 91.)

The Government, until a short period before the Act of March 3, 1871, above referred to, had acted upon the construction which we claim is the true and only one. It is apparent from that Act that there had been a recent attempt of the Secretary of the Treasury to withhold the payment and apply the sums due for transportation to the subsidy bonds and interest. This attempt the Act of 1871 corrects.

Subsequently to the Act of 1871, it is to be presumed that the Secretary of the Treasury complied with its mandate; but in 1873 Congress, probably influenced by the accumulation of interest on the subsidy bonds (which this Court has since determined not to be due from the Company), by the Act of March 3, 1873, directed the whole transportation money to be withheld to the amount of the over-due *interest* (not principal) of the subsidy bonds, and also of the five per cent. of the net earnings, and made provision for suit to determine the question of its power thus to withhold the same.

This Act was passed, as shown by its fourth section, at a period when, rightly or otherwise, there existed in Congress a strong adverse feeling to the defendant corporation and its managers, and yet, Congress was unwilling to assert that the construction of the charter in this matter so long acted upon and ratified by its own enactment was a wrong one.

It cannot, we think, be necessary to argue that this amendment of the charter, made under the circumstances stated, became when accepted a contract between the Government and the defendant which prevents his set-off. That such contract, construed, as we claim (excluding the attempted set-off), is a valid contract, we refer to the language of Mr. Justice Strong (in Reed *vs.* Pierson, 36 Penn. State Reports, p. 324): "This right

"of defalcation (set-off) is a legal right secured to a defendant "in all cases where he holds demands against a plaintiff due in "the same right and due at the time when the suit was commenced "against him. I agree, that he may by express contract preclude "himself from pleading a set-off; such a contract, founded on "consideration, would bind him, and I think a defendant may "also debar himself from using a set-off by a contract *not ex-* "*pressed.*"

Finally. It should perhaps be stated that this whole question, (if the recent legislation of Congress be, — as the Court will assume it to be, — constitutional,) will cease to exist from and after the 30th of June last. (See Act of May 7, 1878) commonly known as the "Thurman Act."

II.

Passing from the demurrer, which, if sustained, will finally dispose of the cause, we come next to the questions raised by the pleadings and proofs.

The earliest one is as to the construction and effect of the tenth section of the Act of 1864. (Appendix, No. 6, p. 38.) The claim of the Company is, that it postpones the payment of five per cent. of net earnings (which was required by the Act of 1862, section 6) until the new mortgage debt and interest shall first be provided for or discharged. It will be perceived that this question could not have been raised under the demurrer nor until the proofs were introduced which show that the Company had accepted the amendment and made the mortgage in question.

The contention will be found to turn upon the question whether not merely a word, but a portion of a statute, may be rejected in arriving at the supposed intent of its framers; and this, when, if that portion of the statute be retained, it may be made to comport with a not unreasonable legislative intent. It is admitted that if without such rejection — the clause is capable of any other sensible interpretation than that given it by Plaintiff, the argument loses part of its force.

The clause to be rejected or interpreted is, "except as to the "provisions of the sixth section of the Act to which this Act is "an amendment, relating to the transmission of dispatches, and "the transportation of mails, troops, munitions of war and sup- "plies of public stores for the government of the United States."

First. It will be admitted that the purpose of the section is to give to the new bonds some advantage or priority over the subsidy bonds of the United States. What that advantage or priority was to be is the question.

Second. It would seem to be quite clear that such priority or advantage included and was intended to include, in some manner which would be effective, all the rights of the Government under each and all of the provisions of the sixth section of the Act of 1862, with a single exception, viz., except so much thereof as relates to the transmission and transportation of dispatches, mails, troops, &c.

The exception of this one portion of the sixth section is as effective and forceful as if, in terms, each of the other provisions of the section had been recited and declared not to be excepted, so that it must be read as if it had in language declared that the rights of the Government under each of the provisions of the sixth section of the Act of 1862, (except, &c.), were subordinated to the new bonds.

To support the contrary view, some reason must be given why the provisions of the sixth section are referred to at all in the section under construction, and most of all why they were referred to, embodied in, and made part of a clause clearly devoted to declaring what rights of the Government were subordinated to the new bonds.

Third. The suggestion may be made that a possible intent of the clause was merely to impose upon the new mortgagees the duties to the Government contained in the exception.

The answer to this is that it is inconsistent with the language used, and that had such been the intent, a plain provision, wholly disconnected with, and not part of or interwoven with, a clause whose whole contents are devoted to the question of pecuniary subordination, would have been inserted.

The learned Court of Claims disposed of this question on two grounds: —

(1.) By giving to the term "lien," in the clause, "the lien "of the United States bonds shall be subordinate to that of the "(new) bonds," a merely literal interpretation, and declaring that there was no lien of the Government to secure the performance of the duties required by the sixth section of the Act of

1862, and that consequently the rights of the United States under that sixth section were not subordinated to the new bonds. (Record, p. 90.)

(2.) Since this criticism was possibly thought too narrow to account for the insertion of the clause in controversy and to be subversive of its terms, the Court next declares the clause, in substance, to be a blunder, thus: "The confusion produced in "that sentence by declaring an exception where none in fact "existed, or could in the nature of things exist, since the matter "excepted is wholly different in its character from that which is "accepted, tends to confusion in its construction." (Record, p. 91.)

This, in effect, strikes out the clause in disregard of the canon of interpretation that every word of a statute shall, if capable of sensible meaning, be retained and made effective.

As to this cortical interpretation of the word "lien," we submit that the provision of the fifth section of the Act of 1862, creating a mortgage and authorizing the Government, — on the failure of the Company to pay the bonds "in accordance with "the provisions of this Act," (among which provisions is the application of the five per cent. of net earnings, annually,) to take possession and hold forever for the benefit of the United States, constitutes a lien by contract. But whether this be so or not, and if the express conditions to which the grants were subjected, contained in the sixth section of the same Act, or the rights of the Government to compel specific performance may or may not be deemed to create a technical lien, yet, where the purpose to give the advantage of priority is manifest and will fail of accomplishment by a literal interpretation of the word lien, it will be construed by the Court to mean such rights of the Government as interfere with the proposed priority.

That a real difficulty was felt with regard to the effect of the clause in question by the learned Court of Claims is manifest when regard is had to its declaration that, "if it appeared that the "earnings of the claimant's Road, after paying the expenses of "its management, were not sufficient to pay the interest on the "first mortgage bonds issued under the authority of that tenth "section, we should not hesitate to hold that the Government "could not demand the five per cent." (Record, p. 91.)

Now this concedes the *conditional* subordination of the right of the Government to the five per cent, namely; if and when the earnings of the Company are inadequate to pay the interest on the new bonds. From what source is this conditional subordination derived, except from the section and clause under discussion; and if from that section and clause, where is there to be found therein the above limitation or condition?

A short statement of the relative conditions of the Government and the Company, when this section was passed, and of the inferences therefrom as to the probability of the Government postponing its rights in the manner suggested, must conclude this discussion.

It must be kept in view that the Act of 1864 was passed to accomplish, by further aid, the construction of a great public work, which, under the Act of 1862, it was found could not be effected.

It must be also noticed that by the mortgage thus authorized there was to be created a debt by the Corporation at the outset of the work, as fast as each section of the Road was completed, and to accumulate during the entire ten years allowed for its completion, the interest on which was to be met semi-annually, and the principal from time to time, as the bonds matured.

From some source this struggling Company was, therefore, from the start, to find means to pay the semi-annual interest on this debt and to provide means for its ultimate extinction. Behind it lay the mortgage of the Government for twenty-seven millions of dollars.

To do this its income must have been known to be its only resource, — a slender resource at the outset of the work, and only on its completion likely to be sufficiently productive to accomplish the end.

Such being the object of the Government, and such the means of the Corporation, it is submitted that an agreement by the Government to suspend, in favor of the new mortgage, the duty of the Company to apply a portion of its income (retaining, however, sums earned by Government transportation) to repayment of the subsidy, is not repugnant to the general purpose of the Government disclosed by both Acts, namely, to effect by its aid and with speed the accomplishment of the work.

III.

If it be held that the claim for half transportation is subject to be set-off by the claim for five per cent. of net earnings, and also that the tenth section of the Act of 1864 in no way affects or postpones the right of the Government to enforce *presently* its claim for the five per cent., then there remain but two general questions for discussion, namely: —

Looking to the findings of fact and to the statutes constituting the charter, when was the Road so completed that its net earnings became subject to the five per cent?

When this shall have been determined, there will arise the further question, what constitute net earnings under the provisions of the Act?

The *present* contention of the Government, supported by the learned Court of Claims is: (1) That the course adopted by the several Presidents of the United States and of each of their Secretaries, during nine years, in the discharge of their duties under the Act establishing the Corporation, has been without warrant or authority of law in this, that the President has accepted provisionally the various sections of the Road, including the final or terminal section, under a written stipulation by the Company, secured by its first mortgage bonds and by its lands, to complete the Road in full conformity to the Act and to the acceptance of the President: (2) Further, that such provisional acceptance must be deemed, in law, a complete and *final acceptance* within the meaning of the Act, and to *estop* both parties from further controversy.

First. Unless the doctrines of estoppel can have place in this attitude of facts, it is difficult to perceive that any other result can flow from the position of the Government, than that there has never been any acceptance at all. If the President had no power to make a provisional acceptance then his act is void, and there has been at no time any acceptance, — a fact which the Government has the burthen to establish to maintain its set-off.

The suggestion that acts of parties creating mutual, legal, or equitable estoppels against their expressed intention, when neither is deceived, but each intelligently designs and understands the precise purpose and effect of a transaction, and to force upon either, by way of estoppel, a different meaning or result, would seem to have in law no possible foundation.

Second. But is it true that the Act, by its just construction, conferred no other powers upon the President but to accept or not, each section as it was presented, so that the aggregate sections accepted should thus constitute and make a completed Road? This construction of the Act leads to this result: that since no other powers are by just construction of its terms conferred on the President, save to accept each section by itself; then he is to find as to such section that it is "ready for the service contemplated by this Act;" that it has "all necessary watering-places, depots, "equipments furniture, and all other appurtenances of a first-"class Road." The sections are, by the Act of 1864, to be of twenty miles. Was each twenty miles not to be deemed completed, unless there was *on it* a depot, watering-places, &c., as above stated?

The seventeenth section of the Act (Appendix, No. 5, p. 38) contemplates the reservation of a certain percentage of the subsidy bonds undelivered until said Road "*and all parts thereof*, provided "for by this Act *are entirely completed.*" This language imports not merely a reservation to prevent abandonment of the work midway, but a security that "*all parts* of it shall be *entirely* completed," in conformity to the requisitions of the Act.

Although this provision was subsequently, in 1864, repealed, yet it does not diminish its force as showing the purpose of the Government not to be bound by the successive acceptance of sections, but to reserve the power to revise the whole work.

The joint resolution of Congress, April 10, 1869, section third (Appendix No. 6, p. 38–39) gives, as we think, an interpretation of the view of Congress as to the powers of the President under the original Act, and, what is more material, sufficiently warrants the act of the President, on the 15th of July subsequently, when he made the provisional acceptance of the last or terminal section of the Road. A careful analysis of this third section of the joint resolution, shows: —

(*a.*) A recognition that, during the period in which the construction had been going on, and when the construction of the last section approached completion (last rail laid May 10, 1869), sections of the *Road had been accepted by the President* "*upon which bonds had already been issued*," and "to secure the full completion (of the Road) as a first-class Road," the steps

described in the Act were directed to be taken by the President. The resolution makes no declaration that such past acceptance was void, and of no effect as against the Government. The ground or necessity on which these provisional acceptances had been made by the President must be deemed to have been communicated or known to Congress at the same time and in the same manner in which it obtained the information that the bonds had already been issued "upon sections" "not completed as a first-class Road." That information must also have shown the fact that heretofore the provisional acceptance had been made *upon agreements, merely*, of the Company that the defective sections should be brought up to the standard, (see Finding No. 4, Record, p. 84, the first four letters of the Secretary to the President, accompanying Commissioner's Report and recommending conditional acceptance with the acceptance subjoined, viz.: January 24, 1866, April 30, 1866, June 25, 1866, and August 8, 1866. Record, pp. 34 to 36.)

Under these circumstances, the joint resolution may fairly be deemed not merely an affirmance of the past course of the President, but a requisition *that security* instead of mere engagements of the Company should be required for the completion of a first-class Road.

(*b.*) But the joint resolution is not merely designed "to secure the final completion" as a first-class Road, of all sections of said Road, provisionally accepted, upon which subsidy bonds have already been issued. It goes on, after requiring security for that class of sections, to provide for future action in determining the course *as to the uncompleted portion of the Road*, by directing the President that "if the amount of subsidy bonds *yet to be issued* "is insufficient to insure *the full completion* of the Road he may "make requisition on the Company for a sufficient amount of "bonds already issued to said Company, — or, in his discretion, of "their first mortgage bonds, — *to secure the full completion of the* "*same.*"

And further, that in default of obtaining security for either of the above purposes the President is authorized to direct suit by the Attorney General, "*or in any manner otherwise to protect the* "*interests of the United States in said Road, and to insure the full* "*completion thereof as a first-class Road, as required by law.*"

(*c.*) Previous to the passage of this joint resolution, the President, having taken the opinion of the Attorney General as

to his supervisory powers (including past provisional acceptances), required of the Company two things: (1) A deposit, from time to time, as the Company shall receive bonds of the United States issued to it on the completion of successive sections, of an amount of its first mortgage bonds, equal to one-half said United States bonds, up to $3,000,000.

(2) An agreement of the Company that in addition to this $3,000,000 all its rights to patents for lands should be left with the Government.

Both these securities were to hold "until the President of the "United States, on a proper examination of the completed road "and equipments, shall be satisfied that the same are so completed as a first-class Road." (Finding 5, Record, pp. 56 to 58.)

(*d.*) These agreements were made (Record, pp. 56, 57, 58,) and it will be noted that between the date of these agreements, (February 14, 1869,) down to July 15, 1869, no issue of bonds upon the completion of successive sections was made, the last issue having been made February 9, 1869, so that at the date of the resolution, April 10, 1869, all remained *in fieri*. (Record, pp. 54–55.)

(*e.*) Then comes, on the 15th July, 1869, the final action of the President in accepting the terminal western section of the Road, which is the Act relied on by the Government and by the Court of Claims as fixing the completion of the Road (Record, p. 55) and estopping both parties unless fraud be shown.

That acceptance consists of this act of the President, namely: "The written recommendations of the Secretary are approved and "the Secretary of the Treasury and himself are hereby directed "to carry the same into effect." (Record, pp. 55–56.)

What, then, were these recommendations, and was it in the power of the President to accept them?

The recommendation is as follows: the Secretary had, on the 27th day of May, on the application of the Central Pacific Railroad Company for acceptance of one of the sections of that Road, recommended "the acceptance of the same in accordance with the "agreement made with the Company, which is to the effect that "they deposit their first mortgage bonds to such an amount as "may be deemed necessary to secure the ultimate completion of "the Road, agreeably to the Act of July 1, 1862." (Record, p. 56.) And now, on this 15th of July, 1869, the Secretary

recommends the acceptance of the final section of the Union Pacific Railroad, and the issue of bonds and patents, "provided, "however, that no bonds or patents shall in any event be issued "until such security shall be deposited with the Secretary of the "Treasury, necessary to secure the ultimate completion of the "Road, agreeably to the Acts mentioned in my letter to you of "27th May last." (Record, p. 55.)

Had the President power to make this provisional acceptance?

He had been authorized, by the resolution of April 10, 1869, if the subsidy bonds thereafter to be issued were still insufficient to secure the full and final completion of the Road, to take as such security first mortgage bonds. He was by that resolution authorized in any other manner to protect the interests of the United States in said Road, and to insure the full completion thereof. Under these circumstances, he authorized first mortgage bonds to be taken as security. Does such acceptance, instead of being, as all the parties agree, provisional merely, become absolute, because he did not order subsidy bonds either to be retained or to be called back?

What took place afterward in relation to the execution or fulfilment of this additional acceptance and agreement is wholly immaterial. The Act can not be altered or qualified thereby.

We again submit that if this provisional or conditional acceptance be void and beyond the President's power, then no acceptance is shown by the Government to sustain the counterclaim filed in this case.

IV.

If the course of the President be valid, then the report of the Commission, appointed by him in 1874 (hereafter referred to), which was directed to report to him on what day the Road was completed, fixes that date to be October 1, 1874, three years earlier than is required by the fifth section of the Act of 1864. (Record, pp. 68 to 74.)

That this Road was not actually completed until about the time fixed by the Commission, is shown in proof by the testimony as set out in plaintiff's request for additional findings (Number 9; Record, p. 85), which being denied by the Court on the ground of immateriality only, must, for the purposes of this argument, be assumed to be true.

Upon this question of the powers of the President and the conclusiveness of his final action, we refer the Court to the judgment of the Circuit Court of the United States for the District of California, based substantially upon the same facts in the case of the United States against the Central Pacific Railroad Company, copies of which we file with the Clerk.

V.

It may not be useless to present from the records, step by step, the course pursued by the several Presidents of the United States in the assumed exercise of powers conferred on them by the Act, since those steps will be shown to be founded on necessity, — a necessity arising from the nature of the work confided to their supervision, and which will hence be deemed to have been contemplated by the statute.

In doing this, we assume that the facts which were the subject of prayers for additional findings, unless rejected on the ground that they were not proven, are, for the purposes of this hearing, to be taken, if material, to have been established. The criticisms of the learned Court below as to the first, second, third and fourth prayers, which are, either that they "ask for findings of evidence," or that they "request the Court to find an argument in "place of a fact," or "because they are argumentative," it is submitted have no just foundation.

What is deemed argumentative is subjoined to the precise prayer, in order to show the Court its materiality. In no case does any prayer ask that evidence or that an argument be found in place of a fact. (Record, pp. 83 to 88.)

A disallowance not assigning any reason ought not to be construed as negativing the proof of the facts, — nor ought the niceties of special pleading to be held applicable to this proceeding.

We preface this history by a summary statement contained in the findings of the Court of Claims, which is the key to the action of the President, namely: "It appeared by the reports of some of "the commissioners appointed by the President to examine and "report upon the sections of the Road, that the *several sections* "*of the Road* were not fully, and could not under the circum-"stances be, completed up to the standard of a first-class Rail-

"road, though they might be and actually were completed, section "by section, so as to *admit* of transportation over the same." (Findings, 5, Record, p. 56.)

First. At the outset, a board of experts was convened by the Government to secure a uniform standard of construction for adoption, as sections should be presented for acceptance. The President accepted this report, February 12, 1865, and directed the section commissioners to be governed by it in directing and accepting the work.

That report recommended, upon grounds stated in it, "that sec- "tions should be accepted in many respects incomplete, as measured "by the statutory standard of a first-class Road, and that the sec- "tions should be brought up to the standard of acceptance." (Davis, Justice, Record, pp. 101–102; Finding, 2, Record, p. 15.)

Second. It is found that at the beginning the "impossibilities "of completion of each section in conformity with the detailed "requirements of the fourth section of the Act were such that, "even before the report of the commission of experts, the first "section of the Road was presented for acceptance, and upon "the recommendation of the Secretary, accepted by the President, "with deficiences of construction which the Company bound itself "to remedy, and he ordered the subsidies of both kinds to issue "therefor, without waiting for the completion of those deficiences, "and the same course was subsequently pursued by the President "and Secretary." (Davis, Justice, Record, pp. 101–102; Record, p. 34.)

Third. On the 9th of October, 1868, and again on the 14th of January, 1869, the President appointed a commission, the instructions to which recited that the standard had been fixed with reference to provisional completeness, upon the assurance of the Company that the same should be brought to completeness with all possible despatch, and directing the commissioners to report what sum would be required to make the Road, as far as complete, "equal to a fully completed first-class Railroad." These commissioners reported in November, 1868, and in January, 1869; the one report fixing the sum at $6,489,340, — the last at $6,771,710.

Now these were public documents from the files of the departments. The Court of Claims refused to permit them to form

part of the facts found, without assigning any ground for such refusal. (Prayers, 4 and 5; Record, p. 84; Ruling, p. 86.)

Fourth. On the 16th of December, 1868, the House of Representatives, by resolution, requested the President, among other things, to report "the amount of bonds issued, and whether suffi-"cient amount had been retained in the hands of the Government "to guarantee its completion as a first-class Road." This, with the reply, was the subject of the plaintiff's fifth prayer (Record, p. 84), which was disallowed, and no ground assigned.

Both the resolution and the message in reply are in printed documents published by the Government, *and thus we have an interpretation of what is the meaning of a naked disallowance of a prayer for findings, viz.: It does not mean that the fact was not proved.*

Now, these documents were material to show that at least one branch of Congress understood that the Government, — although the seventeeth section of the Act of 1862 was repealed, — was, notwithstanding, to issue bonds as the work proceeded, and to retain enough of them to secure ultimate completion.

Fifth. The next important step taken by the President in pursuance of the opinion of the Attorney General, given at his request, is contained in the several letters described in plaintiff's second prayer for findings. (Record, p. 84.)

This prayer discloses generally the character and contents of those letters and of the transactions that followed.

What that evidence established is shown and forms part of the judgment of Mr. Justice Davis, and is stated thus: —

"In September, 1868, twenty-seven sections of the Road, "amounting to 760 miles, had been accepted by the President, "and the issue of the subsidies thereon had been ordered. Much "of the work on these accepted sections was far below the re-"quirements of the statute. Under these circumstances, the "opinion of the Attorney-General was taken as to the duties and "responsibilities of the Executive.

"Attorney General Evarts answered: 'I entertain no doubt "'that the mode of procedure was a competent and useful dis-"'charge of the Executive duty in the premises. * * * But upon "'the same reasons, and in pursuance of the same method hitherto "'followed, I am of the opinion that it is entirely competent to "'the Executive * * * to provide for a revision of the work in

"'the particulars in which a provisional completeness of the suc-
"'cessive sections was accepted, subject to an obligation on the
"'part of the Companies to make good, as far and as fast as might
"'be, what needed to be subsequently supplied.' In conformity
"with this suggestion the claimants, in February, 1869, deposited
"with the defendants $1,600,000 of their first mortgage bonds as
"security for the completion of the Road according to law, and
"agreed that all their land patents might be retained for the same
"purpose." (Record, p. 102.)

It would seem that the facts which were found necessary to the judgment of a member of the Court, and recited in that judgment, must be deemed to have been proved and material.

But the error in exclusion — if error there be — is manifest *when the judgment of a majority of the Court is referred to, in which these acts are claimed to be a transaction merely of the Attorney General, and all reference to the fact that it was on the request of the President, is omitted*, — thus: "It appears that "the claimant *was required by the Attorney General* of the United "States to execute those papers as a guarantee for the *ultimate* "*full* completion 'and equipment of its Road'; and that the fact "is relied on as giving force and efficiency to the proceeding. "However desirable it may have been that the Road should be "brought to a higher degree of completeness than that contem-"plated by the Act, *we were not referred to any statute which* "*made the question of its completion dependent on the judgment* "*or action of the Attorney General*, or vested him with any con-"trol over the action of the claimant in the premises." (Record, p. 95.) That it was the act of the President is stated as above by Mr. Justice Davis.

Sixth. That the deposit of bonds was made, and that the patents for lands were retained, by the Government until after the report of the final commission in 1874, declaring the Road to have been completed on the first October, 1874. (Record, p. 65; Record, p. 74; Finding, 15 and 16.)

Seventh. The Board of Eminent Citizens, appointed by the President under the joint resolution of April 10, 1869, reported, October 30, 1869, that to "supply deficiencies of the construction "of the two parts of the Road the sums of $206,000 and $1,586,100 "were required." (Record, p. 62.)

Eighth. As already stated, a commission was appointed by the President, May 14, 1874, to find and report whether the deficiencies had been supplied, and "if they have been, and the "Road is completed according to law and departmental instruc- "tions, *you will ascertain as near as possible and report the date of* "*such completion.*" (Record, p. 68.)

The report (Record, pp. 69 and 73) declares the Road to have been completed, and this on the first of October, 1874. The report was accepted by the President and the detained patents for lands ordered to be delivered to the Company. (Record, pp. 74–5.)

VI.

It has been argued by the Government that although it is true that the Road was not completed as a first-class Road, required by the Act, until October 1, 1874, yet whensoever its rails were all laid so that it could perform Government service, it was thus completed within the intent of that part of the Act which subjects the Company to the payment of the five per cent. Some support of this theory is afforded by the judgment of the majority of the Court of Claims, although its decision is finally based upon the point that it was not in the power of the President to make provisional acceptance, and that his act in so doing must in law be deemed a final acceptance. This Court says: "It seems to us "clear that this language did not require the sections of the Road, "when examined, to be in the highest condition of completeness "attainable in a first-class railroad, but only in such state of com- "pletion, in the particulars above recited, *as to be ready for the* "*service contemplated by the Act.*" (Record, p. 93.)

Now, the fourth section of the Act thus cited does not define the completion to be one that shall make the Road ready "for the "service contemplated by the Act," but proceeds thus: "*and* "supplied with all the necessary drains, culverts, &c., &c., and "all other appurtenances of a first-class Road;" indeed, the Act throughout looks to service for the general public as well as the Government. (See Section 12, Act of 1862.)

But it is submitted that the term completion in the Sixth Section,—upon which the right to the five per cent. rests—means such completion as shall require no further expenditure of the income of the Road to make it a first-class Road. To hold that

so soon as it was capable of any use by the Government the right to the five per cent. began, would be to hold that, notwithstanding the necessity of the further expenditure of many millions of dollars after the Road was thus opened (which expenditure was required by the Government Commissioners, one of them, in a report under date May 20, 1869, ten days after the Road was opened, the other in report of October 30, 1868, more than three months after the acceptance by the President of the final section of the Road), the Company, with no other resources than its income, were to make these expenditures, first deducting from that income the five per cent. claimed by the Government.

In fact the record shows that the Company performed services for the Government (which the evidence shows exceeded $200,000) for several years before the Road was open its whole length (Record, p. 82; Finding 22). Did the five per cent. begin when the service embraced the last mile of the Road?

We ask the Court to refer to the plaintiff's third request (Record, p. 84) for additional findings, — rejected, strangely, not on the ground that it was not proven, but "because it requested "the Court to find evidence." (Record, p. 84.)

It will there appear that when the Road was opened it could be used only for business to a limited amount, and could not be used to its full capacity until a long time afterwards.

VII.

We come next to the question, What, within the meaning of the Sixth Section of the Act (Appendix No. 1, p. 35) is embraced by, or constitute, "the net earnings of said Road?"

First. A preliminary remark on the use and interpretation of the word "road," in this section, is necessary, since in its literal sense it would seem to limit earnings to gain derived from the mere use of the track and rolling stock for transportation, and thus exclude (as will be seen hereafter) the very considerable revenues of the Company derived from the rents of station-houses, locomotives, and other structures, each of which, by the terms of the charter, the Company were required to build and maintain.

It will be found that the word "road" is used in various parts of the Charter, as it is in common parlance, as synonymous with the word "company" or "corporation," and in some instances where it can mean nothing but corporation or company. Thus:

Act of 1862, Sect. 2. The right of way is granted to "said railroad."

Act of 1862, Sect. 17. "The whole of said railroad, *with all their lands and property*."

Act of 1864, Sect. 14. "At the next election for directors of said railroad."

Second. Further,—The word "earnings," in its primitive, literal sense, tends to a narrowness of construction which, without consideration, might insensibly weigh upon the interpretation of the statute.

The lexical and accurate definition of the word is, "gain, as the reward of labor," (see dictionaries of Johnson, Webster and Worcester.)

Of course the use of the term, as applied to railways, steamships, manufacturing and other trading or commercial corporations, is merely figurative, and must have a different and much wider significance than the "gain or reward of labor." When thus applied, it can mean nothing other than income derived from the legitimate use of the powers conferred by charter; and thus "income" and "earnings" become, *in such application*, convertible terms, since no line of division is practicable.

It should be added, also, that the learned Court of Claims confirms this position, since it has embraced in its statement of earnings every item of the corporate income, including rent of buildings, car service for other roads, ferry earnings, &c., (Record, p. 78,) and has rejected only one of the items of income, namely, "Dividend on Pullman Car Stock," because this was an investment beyond the corporate powers of the Company. (Record, p. 98.)

Assuming that "net earnings of the road," as used in the statute, mean the net earnings of the corporation, and that the term "earnings," when applied to commercial or trading corporations, cannot be construed to mean, or to be limited to, gain, the reward of labor, but import the income of such corporation by the use of its capital, credit and property, — we come to the inquiry, What constitutes the *net* of such earnings? and it is submitted:—

That if it were conceivable in practicable business life that a contract might be made in reference to the net earnings of a commercial corporation which should neither by its provisions, nor by

its nature, nor by the relations of the parties, expressly, or by implication, define what should constitute the same, then it must be held that the terms import the net income or profit of the business of the corporation, since it would furnish no means of discrimination or exception, and thus it is to be inferred that none was intended.

The charter of this defendant corporation is not silent as to what shall constitute net earnings within its intent, but, by means of its distinct provisions as to the use and meaning of those terms, as well as by the nature of the contract and the attitude of the parties, has left no reasonable doubt as to the interpretation.

Let us present first the features of the charter, which (aside from its direct provisions and assuming that it is silent as to what net earnings mean) would, without these provisions tend to the construction that net earnings mean and were intended to mean the net income of the Corporation, such as would be divisible among stockholders, unless retained for other purposes.

1. The contract is one not between strangers to the Corporation as to its net earnings, but by the Corporation itself; and thus naturally imports, in the absence of any provision as to what shall constitute net earnings, that such net earnings are to be made up on the principles usually adopted by corporations to show their actual profits or income.

2. The contract is one not confined to or based upon net profits as its object, but its main purpose is declared to be, by aid and subsidies, to promote and procure, for the use of the Government, the construction of a public work; hence, the reimbursement of subsidies is collateral, merely, and net earnings are to be so construed as not to retard or impede the attainment of the principal object of the Act.

3. The contract is not to be construed as if the Corporation were one already organized, its capital paid up, its necessary plant or property acquired, either on credit or by its capital, in part or in whole. A contract, under such circumstances, involving the subject of net earnings, which should be silent in its definition of those net earnings, might be construed to exclude interest on capital or on outstanding debts, since it would not perhaps presuppose a scrutiny by the parties of the actual condition of the

Corporation, its debts and liabilities, before entering into such contract.

4. This contract, on its face, is made with a corporation yet to be organized. The means by which it is to procure its property and construct its road, are one of the objects of the contract. Those means, among others, were to be loans on credit, maturing at the distant periods of thirty or forty years. To attain those means, the liens and rights of the Government were to be subordinated to those of the lenders. The contract also looks to other and further loans and indebtedness "of various kinds," arising in the construction of the Road (Act of 1862, sect. 20).

It bestows subsidies, and lands to be sold within thirteen years, and in the interim subject to taxation and the expenses of management and sale, and the above were expenditures known and contemplated by the Act to be made by the Corporation, and its resources for such payment were only its income.

The Act which anticipates these expenditures makes no provision that they are not to be deducted to arrive at net earnings. Is there any just ground to contend that such deductions were not intended, or that the purpose of the Act was not to give the Government annually, towards reimbursement of its subsidies, five per cent. of the actual income or profit of the Corporation, before dividing the same among its shareholders or retaining the same for future use, *but to secure its five per cent. upon these expenditures?*

The above considerations are confined to the original charter, namely, the Acts of 1862 and 1864. It should be added, however, that the same principles of construction are applicable to the subsequent Act of February 24, 1874, authorizing the loan to build the Bridge as a substitute for the Ferry, the interest on which loan should be deducted from the earnings.

But whether this view of the construction of the term "net earnings," derived from the relations of the parties and of the contemplated existence of facts as shown by the charter, be sustained or not, we submit that there is found in another part of the charter a clear and distinct definition of the intent of the term "net earnings," — and this intent is declared to be earnings

applicable to dividends among stockholders. This position rests for its support upon the eighteenth Section of the Act of 1862, which is as follows: —

"Whenever it appears that the net earnings of the entire road and telegraph, "including the amount allowed for services rendered for the United States, after "deducting all expenditures — including repairs, and the furnishing, running, "and managing of said road — shall exceed ten per centum upon its cost (exclu- "sive of the five per centum to be paid to the United States), Congress may "reduce the rates of fare thereon, if unreasonable in amount, and may fix and "establish the same by law."

It is indisputable, we submit, that the term "net earnings," as used in this Section, means net earnings applicable to dividends.

The whole object of the Section is to fix a point or measure of reasonable emolument to the corporation, and to authorize the Government, when that point should be reached, to reduce the tolls or fare.

This point, or measure of emolument, is declared to be "ten per centum of the cost of the road."

The cost of the road was the contemplated cost to shareholders, viz., the par value of shares as fixed by the first Section of the Act of 1862; and again, in terms, by the second Section of the Act of 1864, thus: "The capital stock of said Company shall not be increased beyond the actual cost of the road." Of course the cost of the road for this purpose was not to embrace the Government subsidies.

The Section not only thus defines by necessary implication net earnings to be earnings applicable to dividends, but it declares them to be earnings after deducting "all expenditures." The enumeration of things to be included among "all expenditures," which follows, does not narrow the full force of that term.

Fourth.—The next question is: Does this Section of the Act connect itself with the sixth Section of the Act in such manner that the term "net earnings" must be deemed to have the same meaning in both? and we submit that it does. Thus: —

The net earnings to authorize the reduction of fares are to be such as "shall exceed ten per centum of its cost *exclusive of the five per centum to be paid to the United States.*" That is to say, exclusive of the five per centum of net earnings provided to be paid to the United States by the sixth Section.

The net earnings, then, which are the subject of Section six,

are distinctly referred to in this Section eighteen. They are declared not to be deductions from the ten per centum net earnings provided for in this eighteenth section.

In thus legislating on the subject of net earnings, and their bearings upon the different provisions of the Act, can it be deemed true that without anything in the subject matter directly requiring it, Congress intended two sets of net earnings, made up upon two different principles, and if so, why was not the distinction declared?

If, to accomplish the declared objects of the two Sections, it would result that different modes of making up net earnings were required to effect that object, our argument would lose its force, but such is not the fact. The object of one Section is to anticipate a debt to the Government maturing at a distant period. The object of the other Section is to relieve the Government and the public from excessive rates of tolls. It is not perceived that these objects differ in substance, or require a different interpretation of the words in question.

X.

If the views thus submitted to the Court shall be found to be correct, it is fit next to call attention to the disregard of or departure therefrom by the learned Court of Claims, and we extract from the record the declared principles on which its decision was based. They are as follows:

"In deciding what net earnings are, we take, 1, the gross re-
"ceipts of the claimant from operating its road and telegraph
"line; and, 2, the gross receipts from rents of buildings or parts
"of buildings belonging to the road; and from the aggregate of
"those two items we deduct the expenses of operating the road
"and line to earn the first description of receipts, and the remainder
"constitutes the net earnings." (Record, p. 97.)

The principle thus adopted, as well as the account made up by the Court in conformity to it, strikes out of the deductions from earnings the large sums of interest annually paid by the Company on its First Mortgage bonds, authorized by the Act of 1864, to which the Government subordinated its lien and mortgage, (and which are recognized in the Thurman Act, hereinafter referred to, as deductions to be made to arrive at net earnings,) also all

sums paid for interest on moneys borrowed to complete the enterprise and build its bridge (to which Government only afforded "aid"), which loans were mostly secured by mortgages, and also many other items of expenditure made by the Company,—which the Court declare are not within its principles "*expenses of operating the road to earn receipts.*" Record, p. 98.

We assume that this Court will not act upon the numerous details of the account, but declare the just principles upon which, looking to the facts disclosed by the record, an account of net earnings should be made up, and remit the case for further action, in conformity thereto, if corrections be required.

We ask the Court, then, to find and declare that, under the sixth Section of the Act of 1862, the annual net earnings of the Company are to be deemed to be such earnings as remain after deducting from all its annual income (derived directly or incidentally from the legitimate exercise of its chartered powers) all its legitimate annual expenditures in the exercise of the same powers, and that net earnings under the Section means such earnings as would be divisible as profits among the shareholders of the Company.

If this request shall be found not to comport with just principles of construction, it will be requisite briefly to call the attention of the Court to certain errors of the Court below, even if it be assumed that its construction of the term net earnings is sound.

To make the defendant's contention plain it is necessary to state:—

That the Court below, in their finding, Number 18, (Record, p. 76 to 80,) set out in full the schedules returned by the Company of its earnings and expenditures from November 6, 1869, to November 5, 1875; and in order to meet the contingency that the road should be held to have been completed October 1, 1874, the finding also sets out separate, similar schedules from October 1, 1874, to September 30, 1875. (Record, pp. 80, 81.)

Having done this, the Court then subjoins the following statement of the character and amount of the several items of expenditures contained in the schedule from November 6, 1869, to November 5, 1875, which it was claimed by the Government should not be allowed; and also as to the schedules from October 1, 1874,

to September 30, 1875, they subjoin the same statement *mutatis mutandis*. That statement is as follows, and *the aggregate of the deductions thus claimed by the Government, is* $632,502.99.

"Items 5, 6, 7, 8, 9, 10, 11, 12, 14, and 15 are not in dispute.

"Item 1, 'conducting transportation expenses,' is liable to be reduced by the "amounts shown in line 1 of the table below as expended for 'tenement houses "and hotels,' and by the amounts shown in line 2 as expended for new station-"buildings; item 2, 'motive-power expenses,' is liable to be reduced by the "amounts shown in line 3 as expended for 'engine-equipment,' and by the "amounts shown in line 4 as expended for 'tanks and water works:' item 3, "'maintenance of cars expenses,' is liable to be reduced by the amounts shown "in line 5 as expended for 'car-equipment;' and item 4, 'maintenance of way "'expenses,' is liable to be reduced by the amounts shown in line 6 as expended "for the 'Laramie rolling mills,' in case such several and respective outlays are "regarded as not proper to be deducted from "gross earnings' in order to arrive "at 'net earnings.'"

		Nov. 6, 1872, to Nov. 5, 1873.	Nov. 6, 1873, to Nov. 5, 1874.	Nov. 6, 1874, to Nov. 5, 1875.
1	Tenement-houses and hotels		$1,659.96	$21,229.53
2	New station-buildings	$6,909.98	18,116.77	78,589.57
3	Engine-equipment		25,398.69	63,277.70
4	Tanks and water works		734.99	12,450.13
5	Car-equipment		3,600.00	206,930.36
6	Laramie rolling-mills		43,716.01	149,859.30

"Item 13, 'expense account,' is subject to be reduced by the following "amounts in case such outlays are regarded as not proper to be deducted from "'gross earnings,' in order to arrive at 'net earnings,' viz.: In the year Novem-"ber 6, 1869, to November 5, 1870, expenses relating to an issue of bonds, "$10,339.76; March 13, 1871, cost of a plate for the bridge bonds, $1,500; June "5, 1874, an expense relating to the issue of sinking-fund bonds, $6,579.10. "(Record, p. 79.)"

The items of deduction thus claimed, as shown by the statement, are for "tenement houses and hotels," "new station buildings," "motive power expenses," "engine equipments," "tanks and water works," "maintenance of cars expenses," and "amounts expended for Laramie rolling mills."

The Court, by a judgment of the majority (Mr. Justice Davis seemingly dissenting, Record, pp. 101 to 108), struck out each and all of those expenditures as not being proper deductions from the earnings.

First. Now before adverting to the grounds on which the Court founds this its action, we desire to place in front the following findings of fact, viz., Findings 23 and 24, Record, p. 82, as follows:—

"XXIII. That the disputed items in charges made by the Company under "the head of expenditures,—namely, 'tenement houses and hotels, new station "'buildings, engine equipments, tanks and water-works, car equipments,' *were "each of them not only new, but rendered necessary by the increasing business of the "road.* That the said tenement houses and hotels were necessary for occupancy "by employés of the Company and for feeding passengers. *The rents of these "hotels and tenements are credited among the earnings of the Company in the state-"ment of earnings,* Schedule B, reported in these findings.

"XXIV. That the Laramie rolling-mill was built as an economy. The "Company was obliged until its erection to transport its rails to distant places "East to be rerolled, the expense of which had been charged to 'maintenance of "'way' up to the completion of the rolling mill. *The charge, up to that period, "is among the items of expenditure allowed and not disputed.*"

We next ask attention to the reasons given by the majority of the Court for the rejection of these expenditures, and they are as follows (Record, pp. 97, 98):—

"In ascertaining the expenses of the road, we exclude all amounts paid on "construction account, because the claimant is not, in our view, entitled to charge "them against earnings until it shows that its construction fund was exhausted; "and no attempt was made to show that. On the contrary, it must, as we con-"ceive, be certain that that fund has not yet been exhausted.

"The claimant's construction fund consisted of four items,—viz.: 1, Capital "stock; 2, First mortgage bonds; 3, United States bonds; and 4, Lands received "from the United States.

"From Senate Report, No. 111, Forty-fifth Congress, second session, we "ascertain that the amounts of the first three of these items were as follows:—

"1. Capital stock paid in	$36,762,300
"2. First mortgage bonds	27,232,000
"3. United States bonds	27,236,512
"Total	$91,230,812

"In addition to this sum, the land-grant to the claimant was about 12,000,000 "acres, of which, up to July 1, 1874, only 3,445,781 acres had been patented to "the claimant, leaving nearly three-fourths of the entire grant not then fully "available for any purpose of expenditure, and, therefore, certainly not used in "construction.

"But of the quantity patented the claimant had, up to that date, sold only "1,013,774 acres, leaving nearly 11,000,000 acres not yet, at that time, used for "any purpose of construction.

"As the claimant's demand comes down to only December 31, 1875, we deem "ourselves justified in holding that on that day there must have been millions of "acres of those lands still undisposed of by the claimant, the proceeds of the "sales of which would more than suffice to meet all accruing outlays for con-"struction. While that condition existed, we are clear in the opinion that the "claimant had no legal right to charge any construction expense whatever against "its gross earnings, so as thereby to diminish the amount of earnings out of "which it should apply five per cent. toward payment of the bonds of the "Government."

This view seems to the defendant as quite extraordinary. It is in substance that because the Company had remaining from its land-grant donation means enough of its own to make these expenditures, they were bound under this Act thus to apply their means; and what is curious, the Court after refusing, as we have shown, to find among the facts the Message of the President, in answer to the call of the House of Representatives (see p. 19 of this Brief), itself resorts to a Senate report for the purpose of showing that the Company have remnants of the land-grant, which document forms no part of the findings contained in the Record.

But the whole ground is defective in principle. It loses sight of the fact, which the judgment of the Court elsewhere declares to be true, viz., that the Company had finished the road in full compliance with its contract, that it "was accepted by the President, and the question of completion finally settled and determined, unless it could be impeached for fraud." (Record, p. 96.)

Did there still remain a duty of the Company to apply any remnant of its subsidies to new structures "rendered necessary by the increasing business of the road"?

The true question is, whether, after the contract of the Company had been fulfilled, and a completed, first-class road built and accepted by the Government, all future expenditures made to meet the increasing traffic of the Road, on which traffic the Government was to receive five per cent. of the net earnings, is to be paid for by the Company from out its income or net earnings, *after the Government shall have first received five per cent. upon the same*, or are such expenditures to be deducted from the income of the road before the Government is entitled to its five per centum?

In fact the increased receipts of the Government, by means of its five per cent. on the increased traffic, is but one mode by which the fruits of these expenditures inure to its benefit. The case finds that the rents of these tenement houses and hotels have all been credited by the Court as part of the earnings of the Company, and the profits made from the use of new equipment by other companies is also credited by the Court to the Government, in Item 11, Schedule of Earnings. (Record, p. 76.)

There are two other rather large items of expenditures which have been disallowed by the Court of Claims, to which we ask briefly to refer. The first is Item 30, Schedule B, Record, p. 78. It is a claim by the Company to have the sums earned by it in transportation for the Government, and retained by the Government in anticipated payment of its subsidy bonds, deducted from the earnings to arrive at net earnings.

The Company admit that this is one of their earnings, but the question is, upon the true construction of the Act, was it designed that not only these earnings, but that five per cent. also upon the amount of these earnings, should inure to the Government in anticipated payment of the subsidy bonds?

In the eighteenth section of the Act these amounts are *for the purposes of that section* made expressly part of the earnings. Such express provision in the same Act in relation to the meaning that shall, for the purposes of that section, be given to net earnings, indicates that the framers well understood that without such express provision they would be excluded.

But, as before submitted, the improbability that in an Act designed to aid a faltering corporation Government intended to withhold not merely the earnings, but five per cent. in addition to those earnings, is persuasive as to the construction and intent of the section.

Whether the disallowance by the Court of the items of expenditures in printing bonds, a great part of which (if bridge bonds be included) were expressly authorized by Congress, is right, is a question we refer without debate to the determination of the Court.

ASSIGNMENT OF ERRORS.

The plaintiff alleges the rulings, judgments and proceedings of the Court of Claims to be erroneous in this:—

First.—That said Court erred in over-ruling the demurrer filed by the plaintiff to the counter-claim of defendant, and thus sustaining the legal right of defendant to file such counter-claim.

Second.—That said Court erred in ruling that the tenth section of the Act of Congress, approved July 2, 1864, did not defeat

or affect the right of defendant to file and maintain said counter-claim in this case.

Third.—That said Court erred in its rulings or conclusions of law by which it is declared that the road of the plaintiff was completed within the meaning of the Acts of Congress before the first day of October, 1874, and in fixing the date of said completion at an earlier period.

Fourth.—That said Court erred in its rulings and conclusions under the facts found, both in principle and in details, as to what constituted the net earnings of the plaintiff within the intent and meaning of the Acts of Congress which form the charter of the plaintiff.

Fifth.—That said Court erred (even if its conclusions of law, as to when said road was completed and as to what constituted the net earnings of said plaintiff, were correct,) in not allowing a deduction from the earnings of the plaintiff, to arrive at the net earnings, of its large expenditures made for new structures, rolling-stock, and other supplies and materials, after the completion and acceptance of the road, and rendered necessary by its increasing business, and also in not allowing the expenditures of plaintiff for the rolling-mill, and the expenditures made for printing its bonds. Perhaps attention should be called to the fact that the record shows that the judgment of the Court of Claims was that of two only of its members, namely, Chief Justice Drake and Justice Richardson. The concurrence of Judge Davis is a qualified one, and made simply in order that a judgment might be rendered. What was the view of Mr. Justice Nott does not appear.

S. BARTLETT,

Of Counsel for Plaintiff.

APPENDICES.

APPENDIX No. 1.

[Act of July 1, 1862.]

SECT. 6. *And be it further enacted*, That the grants aforesaid are made upon condition that said Company shall pay said bonds at maturity, and shall keep said railroad and telegraph line in repair and use, and shall at all times transmit dispatches over said telegraph line, and transport mails, troops, and munitions of war, supplies, and public stores upon said railroad for the Government, whenever required to do so by any department thereof, and that the Government shall at all times have the preference in the use of the same for all the purposes aforesaid (at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service); and all compensation for services rendered for the Government shall be applied to the payment of said bonds and interest until the whole amount is fully paid. Said Company may also pay the United States, wholly or in part, in the same or other bonds, treasury notes, or other evidences of debt against the United States, to be allowed at par; and after said Road is completed, until said bonds and interest are paid, at least five per centum of the net earnings of said Road shall also be annually applied to the payment thereof.

APPENDIX No. 2.

[Amendment of 1864.]

SECT. 5. *And be it further enacted*, That the time for designating the general route of said railroad, and of filing the map of the same, and the time for the completion of that part of the railroads required by the terms of said Act of each Company, be, and the same is hereby, extended one year from the time in said Act designated; and that the Central Pacific Railroad Company of California shall be required to complete twenty-five miles of their said Road in each year thereafter,

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and the whole to the State line within four years, and that only one-half of the compensation for services rendered for the Government by said companies shall be required to be applied to the payment of the bonds issued by the Government in aid of the construction of said roads.

APPENDIX No. 3.

[Act of March 3, 1871.]

"SECT. 9. That in accordance with the fifth Section of the Act approved July 2, 1864, entitled 'An Act to amend an Act entitled an Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure the Government the use of the same for postal, military, and other purposes,' approved July 1, 1862, the Secretary of the Treasury is hereby *directed* to pay over *in money* to the Pacific Railroad Companies mentioned in said Act, and performing services for the United States, one-half of the compensation, at the rate provided by law, for said services heretofore or hereafter rendered: *Provided*, that this section shall not be construed to affect the legal rights of the Government or the obligations of the Companies, except as herein specifically provided."

APPENDIX No. 4.

[Act of March 3, 1873.]

SECT. 2. That the Secretary of the Treasury is directed to withhold all payments to any railroad company and its assigns, on account of freights or transportation over their respective roads, of any kind, to the amount of payments made by the United States for interest upon bonds of the United States issued to any such company and which shall not have deen reimbursed, together with the five per cent. of net earnings due and unapplied as provided by law; and any such company may bring suit in the Court of Claims to recover the price of such freight and transportation; and in such suit the right of such company to recover the same upon the law and the facts of the case shall be determined, and also the rights of the United States upon the merits of all the points presented by it in answer thereto by them, and either party to such suit may appeal to the Supreme Court; and both said Courts shall give such cause or causes precedence of all other business.

* * * * * * * *

SECT. 4. That the Attorney-General shall cause a suit in equity to be instituted in the name of the United States against the Union

Pacific Railroad Company, and against all persons who may, in their own names or through any agents, have subscribed for or received capital stock in said road, which stock has not been paid for in full in money, or who may have received, as dividends or otherwise, portions of the capital stock of said road, or the proceeds or avails thereof, or other property of railroad, unlawfully and contrary to equity, or who may have received as profits or proceeds of contracts for construction or equipment of said road, or other contracts therewith, moneys or other property which ought in equity to belong to said railroad corporation, or who may, under pretence of having complied with the Acts to which this is an addition, have wrongfully and unlawfully received from the United States, bonds, moneys, or lands, which ought in equity to be accounted for and paid to said railroad company or to the United States, and to compel payment for said stock, and the collection and payment of such moneys, and the restoration of such property, or its value, either to said railroad corporation or to the United States, whichever shall in equity be held entitled thereto. Said suit may be brought in the circuit court in any circuit, and all said parties may be made defendants in one suit. Decrees may be entered and enforced against any one or more parties defendant without awaiting the final determination of the cause against other parties. The Court where said cause is pending may make such orders and decrees and issue such process as it shall deem necessary to bring in new parties or the representatives of parties deceased, or to carry into effect the purposes of this Act. On filing the bill, writs of subpœna may be issued by said Court against any parties defendant, which writ shall run into any district, and shall be served, as other like process, by the marshal of such district. The books, records, correspondence, and all other documents of the Union Pacific Railroad Company, shall at all times be open to inspection by the Secretary of the Treasury, or such persons as he may delegate for that purpose. The laws of the United States providing for proceedings in bankruptcy shall not be held to apply to said corporation. No dividend shall hereafter be made by said company but from the actual net earnings thereof; and no new stock shall be issued, or mortgages or pledges made on the property or future earnings of the company, without leave of Congress, except for the purpose of funding and securing debt now existing, or the renewals thereof. No director or officer of said road shall hereafter be interested, directly or indirectly, in any contract therewith, except for his lawful compensation as such officer. Any director or officer who shall pay or declare, or aid in paying or declaring, any dividend, or creating any mortgage or pledge prohibited by this Act, shall be punished by imprisonment not exceeding two years, and by fine not exceeding five thousand dollars. The proper circuit court of

the United States shall have jurisdiction to hear and determine all cases of mandamus to compel said Union Pacific Railroad Company to operate its road as required by law.

APPENDIX No. 5.

[Act of July 1, 1862.]

SECT. 17. *And be it further enacted*, That in case said company or companies shall fail to comply with the terms and conditions of this Act, by not completing said road and telegraph and branches within a reasonable time, or by not keeping the same in repair and use, but shall permit the same for an unreasonable time to remain unfinished or out of repair and unfit for use, Congress may pass any Act to insure the speedy completion of said road and branches, or put the same in repair and use, and may direct the income of said railroad and telegraph line to be thereafter devoted to the use of the United States, to repay all such expenditures caused by the default and neglect of such company or companies: *Provided*, That if said roads are not completed, so as to form a continuous line of railroad, ready for use, from the Missouri River to the navigable waters of the Sacramento River, in California, by the first day of July, eighteen hundred and seventy-six, the whole of all of said railroads before mentioned, and to be constructed under the provisions of this Act, together with all their furniture, fixtures, rolling stock, machine shops, lands, tenements, and hereditaments, and property of every kind and character, shall be forfeited to and be taken possession of by the United States: *Provided*, That of the bonds of the United States in this Act provided to be delivered for any and all parts of the roads to be constructed east of the one hundredth meridian of west longitude from Greenwich, and for any part of the road west of the west foot of Sierra Nevada Mountains, there shall be reserved of each part and instalment twenty-five per centum, to be and remain in the United States Treasury, undelivered, until said road, and all parts thereof provided for in this Act, are entirely completed; and of all the bonds provided to be delivered for the said road, between the two points aforesaid, there shall be reserved out of each instalment fifteen per centum, to be and remain in the Treasury until the whole of the Road provided for in this Act is fully completed; and if the said Road, or any part thereof, shall fail of completion at the time limited therefor in this Act, then and in that case the said part of said bonds so reserved shall be forfeited to the United States.

APPENDIX No. 6.

[Resolution of Congress, April 10, 1869.]

SECT. 2. *And be it further resolved*, That, to ascertain the condition of the Union Pacific Railroad and the Central Pacific Railroad, the President of the United States is authorized to appoint a board of eminent citizens, not exceeding five in number, and who shall not be interested in either road, to examine and report upon the condition of, and what sum or sums, if any, will be required to complete, each of said roads, for the entire length thereof, to the said terminus as a first-class railroad, in compliance with the several acts relating to said roads; and the expense of such board, including an allowance of ten dollars to each for their services for each day employed in such examination or report, to be paid equally by said companies.

SECT. 3. *And be it further resolved*, That the President is hereby authorized and required to withhold from each of said companies an amount of subsidy bonds authorized to be issued by the United States under said acts sufficient to secure the full completion as a first-class road of all sections of such road upon which bonds have already been issued, or in lieu of such bonds he may receive as such security an equal amount of the first mortgage bonds of such company; and if it shall appear to the President that the amount of subsidy bonds yet to be issued to either of said companies is insufficient to insure the full completion of such road, he may make requisition upon such company for a sufficient amount of bonds already issued to said company, or in his discretion of their first mortgage bonds, to secure the full completion of the same. And in default of obtaining such security as [is] in this section provided, the President may authorize and direct the Attorney-General to institute such suits and proceedings on behalf and in the name of the United States, in any court of the United States having jurisdiction, as shall be necessary or proper to compel the giving of such security, and thereby, or in any manner otherwise, to protect the interests of the United States in said road, and to insure the full completion thereof as a first-class road, as required by law and the statutes in that case made.

In the Supreme Court of the United States.

THE UNION PACIFIC RAILROAD COMPANY,
APPELLANT,
vs.
THE UNITED STATES.
No. 736.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

THE UNION PACIFIC RAILROAD COMPANY, appellant,
vs.
THE UNITED STATES.
No. 736.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT OF PLEADINGS.

The Union Pacific Railroad Company filed their petition in the Court of Claims, claiming compensation for services performed by them for the government in the transmission of dispatches over their telegraph lines and in the transportation of mails, troops, munitions of war, supplies, and public stores upon their railroad. For these services judgment has been rendered by the Court of Claims in the amount of $1,187,254.21.

There is no controversy as to the rights of the respective parties in regard to that sum, and the court has directed that one-half of it should be retained in the Treasury to be applied to the payment of bonds of the United States issued to the company, and the other half

paid to the company, viz, $593,627.10 (act July 1, 1862, sec. 6, 12 Stat., 489; act July 2, 1864, sec. 5, 13 Stat., 356), subject, however, to the counter-claim of the United States, on which judgment has been rendered for $1,402,602.28, for the balance of which judgment has been rendered for the United States.

The counter-claim of the United States is founded upon the last clause of the sixth section of the act of 1862 (12 Stat., 493), which is in these words: "And after said road is completed, until said bonds and interest are paid, at least 5 per centum of the net earnings of said road shall also be annually applied to the payment thereof.

It was alleged by the United States in the counter-claim that the road was completed on or before November 6, 1869; that the bonds issued in accordance with the fifth section of the act of 1862, and interest thereon, are not paid; and that the company had net earnings each year from the date of completion during the whole period covered by the counter-claim.

To this a demurrer was filed, setting forth that one-half part of the compensation for services which should be allowed to the company should be applied to the payment of bonds, and the other half paid to the petitioner in money, and not be withheld, retained, or applied in any manner to the payment of bonds or the interest thereon under and by virtue of the acts of Congress of July 1, 1862, and July 2, 1864, and is not subject to set-off or to said counter-claim so made and set up by the United States. (Rec., pp. 13, 14.)

The demurrer to the counter-claim was overruled, with leave to the claimant to answer over.

An answer to the counter-claim was then filed, which

admits the grants of bonds as set forth in the counter-claim and the accruing of interest thereon, that the bonds have not been paid, that the interest has been paid by the United States, and that the interest has been only in part reimbursed by the retention and application of sums earned, and denies the other allegations of the counter-claim.

It remained for the United States to establish that the road was completed on or before November 6, 1869, within the meaning of the statute, and that within the period covered by the counter-claim there were net earnings; and the court decided that the United States were entitled to recover under their counter-claim 5 per cent. of the claimant's net earnings from November 6, 1869, to November 5, 1874, amounting to $1,402,602.28.

The original charter to the Union Pacific Railroad Company was granted by an act of Congress approved July 1, 1862 (12 Stat., 489). It was amended or affected by the acts approved July 2, 1864 (13 Stat., 356), March 3, 1865 (13 Stat., 573), July 3, 1866 (14 Stat., 79), a joint resolution of April 10, 1869 (16 Stat., 56), and acts approved May 6, 1870 (16 Stat., 121), March 3, 1873 (17 Stat., 508), June 20, 1874 (18 Stat., 111, 112), June 22, 1874 (18 Stat., 200).

THE QUESTION RAISED BY THE DEMURRER.

As the appellant, by its counsel, raised in the Court of Claims by demurrer the question whether the half compensation for services rendered, which the United States admit to be payable to the company, as distinguished from the half compensation retained in the Treasury to be applied to the payment of the bonds

issued by the United States to the company, should not be paid to them in money, as it is expressed, clear of offsets, counter-claims, or any other charge, it is proper at this place in argument to discuss the proposition.

It is contended by the company that the clause, section 5, act of July 2, 1864, (13 Stat., 356), "and that only one-half of the compensation for services rendered for the government by said company shall be required to be applied to the payment of the bonds issued by the government in aid of the construction of said road," embodies a contract by the United States to pay the half transportation, irrespective of any indebtedness of the company to the United States, and that the allowance of the counter claim would be in violation of this contract.

First. There is no such contract in the clause cited or elsewhere. Its language neither expresses nor implies that which is attributed to it. Its meaning can be only reached by reference to the following clause of section 6 of act of 1862 (12 Stat., 489): "and all compensation for services rendered for the government shall be applied to the payment of said bonds and interest until the whole amount is fully paid," which explains the purpose and intent of the amendment. The clause of 1864 is a mere limitation of the extent of the right vested in the government by the clause of 1862, and its meaning and purposes depend on and are controlled by the meaning and purposes of the section to which it is an amendment. It should first be seen how the law stood before the amendment of 1864.

Section 6 of the act of 1862 sets forth the conditions and duties imposed on the company, and assumed by them in consideration of the preceding grants. These

grants included, among other things, a loan of government credit in the shape of bonds, the semi-annual interest on which, however, by payment, became an actual loan of government money.

The cash so paid out for them the company was not required to refund until the maturity of the bonds, *except as they should comply with the covenants imposed on them by this section*, which in this respect were twofold, namely: First. To surrender their lawful right to direct compensation for any service rendered to the government, and to let the entire amount of such compensation earned be applied to cancel a like amount of their existing indebtedness for the cash advanced or of the obligations issued on their behalf as the case might be. Second. To pay the government annually, after completion of their road, five per centum of the net earnings, to be applied in like manner.

This statute can hardly be said, therefore, to contemplate only a certain future indebtedness. On the contrary it not only provided for immediate reimbursement of the advances to the full extent available from the two designated sources, but the provision is particularly clear and emphatic. Any future indebtedness contemplated was not certain, but contingent on the failure of complete reimbursement from those sources.

The reason and meaning of the subsequent modification is plain. As to these two sources of reimbursement, that by retention of transportation earnings would from the nature of the case first become available, and in fact would be productive as soon as any portion of the road came into use.

The act of 1862 peremptorily exacted certain payments (or what amount to such) from the company, and

so far as respects the present issue these are current annual payments which but for the act of 1864 claimant must and would admit to be due. The clause of 1864 relieving the road, as an act of grace, from the payment of one-half only of the transportation money, had only the effect upon the previous provisions as to reimbursement to so alter the transportation clause of 1862 as to make it read as though it had been originally, "and one-half of the compensation" in place of "and all compensation."

Suppose the covenant had, in fact, originally been for one-half transportation and not the whole, and the case before the court now had arisen, could the claimant have maintained the position that because it had a right to half transportation the government could not affect it by the unpaid 5 per cent. of net earnings. And if it could not in that case, how is its position strengthened by the fact that the defendants' right to a part of the transportation fund has been remitted by statute? Is the government to be put in worse position in consequence of its act of grace than it would have held if it had required the same thing in the beginning as now? Certainly not, unless the intent of Congress to sacrifice rights previously secured is unequivocally manifest, and the burden of showing this lies on the claimants.

The appellant's position is, in fact, that in 1864, by statute, the government contracted with it that in case there should be thereafter any sum *payable* to it for transportation service, the government would not exercise the common right of a debtor to set off against such sum any existing counter-indebtedness for net earnings under the covenant of 1862.

By this it must either mean that the United States

surrendered the right to adopt a particular remedy or form of recovery, leaving other remedies, as by direct suit, open to them, or that the existence of an indebtedness for half transportation, however small, bars the recovery in any form of a counter-indebtedness for net earnings, however great.

The proposition involves the substantial nullification of the clear provisions of the act of 1862, and requires the strongest evidence of such an intent in Congress.

While the claimant is entitled to be heard in the Court of Claims upon its demand for transportation, such a construction deprives the government of the opportunity to have the amount of the 5 per cent. there adjudicated and recovered, although such adjudication is necessary in order to ascertain how much is due, or whether anything is due the claimant. It would compel the United States to pay money to a claimant who was actually their debtor, and from whom they might immediately recover it in another tribunal.

Second. No court has adjudged or even intimates the existence of any such contract as is alleged.

No such question was involved in the case of the United States *vs.* Union Pacific Railroad Company (91 U. S., p. 85). The counter-claim there was for the cash advances of interest, and the defendants, in the absence of any express requirement in the statutes that the company should reimburse the said advances *as such* and *when made*, argued that such a requirement was implied in certain terms of the act in question, but the courts decided that said terms could not fairly be so construed.

The court says in substance that the application of a present indebtedness by the company for the cash ad-

vances of interest, would make the clause remitting the half transportation of no benefit to the company, whereas it was presumably intended for its benefit.

This position is addressed to an attempt to create a liability of the company not warranted by the statute. It has no bearing on, and could not have been intended to apply to, an indebtedness indisputably created by the statute. Neither Congress nor the court could have contemplated a refusal by the company to fulfill its obligation to pay the 5 per centum.

Third. Section 9 of the act of March 3, 1871 (16 St., 525), cannot be cited as giving a contemporaneous legislative construction to the clause such as is here claimed.

If there was no such statutory contract by the government, as the United States contends has been shown, this act is of no consequence. Even if the matter was in doubt, it is not easy to perceive how it aids the claimant's case. The Supreme Court (91 U. S.) refers to the act, and the reasons for its passage.

The direction to the Secretary relied on was revoked by section 2, act March 3, 1873 (17 St., 508); and the proviso of the said 9th section of the act of 1871 shows that the act was not intended to affect existing rights and obligations, as indeed it could not lawfuly do.

Fourth. If this is a question of jurisdiction, all doubt is removed by section 1059 Revised Statutes:

"The Court of Claims shall have jurisdiction to hear and determine the following matters:

"First. All claims founded upon any law of Congress, or upon any regulation of an executive department, or upon any contract, expressed or implied, with the Government of the United States, and all claims which may be referred to it by either House of Congress.

"Second. All set-offs, counter-claims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the Government of the United States against any person making claim against the government in said court."

The same section that gives jurisdiction to the court to hear claims presented by parties, gives authority and jurisdiction to the court to hear and determine all set-offs, counter-claims, &c.

If, however, the company brought suit in the Court of Claims to recover the price of freight and transportation in accordance with section 2 of the act of March 3, 1873 (17 Stat., page 508), it is there provided "in such suit the right of such company to recover the same upon the law and the facts of the case shall be determined, and also the rights of the United States upon the merits of all the points presented by it in answer thereto by them" (including a demand for 5 per cent. of net earnings due and unapplied).

The jurisdiction of the court in the matter of the counter-claim for 5 per cent. of the company's net earnings and the authority to render judgment on it in favor of the United States, setting off as part payment thereof the amount of half compensation payable to the company, cannot be successfully questioned.

THE QUESTIONS UNDER THE SIXTH SECTION TO BE DETERMINED BY THE COURT IN THIS CONTROVERSY ARE: FIRST, AT WHAT DATE WAS THE UNION PACIFIC RAILROAD COMPLETED? AND, SECOND, WHAT CONSTITUTED NET EARNINGS WITHIN THE MEANING OF THE STATUTE DURING THE PERIOD COVERED BY THE COUNTER-CLAIM?

Before proceeding to discuss these questions of fact and law, it is in natural order to meet the argument of the appellant on a preliminary question of importance, which has been heretofore pressed. The question is this: Did the tenth section of the act of July 2, 1864, (13 Stat., 356), in effect repeal or suspend the clause of the sixth section of the act of July 1, 1862, providing for the annual payment to the United States of 5 per cent. of the net earnings of the company?

The tenth section of the act of 1864 provides that "the Union Pacific Railroad Company can issue first-mortgage bonds on their respective railroad and telegraph lines to an amount not exceeding the amount of the bonds of the United States, and of even tenor and date, time of maturity, and character of interest, with the bonds authorized to be issued to the said railroad companies respectively, and a lien of the United States bonds shall be subordinate to that of the bonds of any or either of said companies hereby authorized to be issued on their respective roads, property, and equipments, except as to the provisions of the sixth section of the act to which this act is an amendment, relating to the transmission of dispatches and the transportation of mails, troops, munitions of war, supplies, and public stores for the Government of the United States." This section only subordinates one lien to another—the lien of the subsidy bonds to that of the first-mortgage bonds. This subordination is itself modified by the exception as to the provisions of the sixth section of the act of 1862, as to the transmission of dispatches, mails, &c., *i. e.*, the vital purposes of the road. If first-mortgage bondholders take possession of the road on foreclosure, these duties would have to be performed by them.

The exception of the tenth section was only to the provisions of the mortgage, and is limited thereto. The provision as to 5 per cent., in the sixth section of the act of 1862, is distinct and independent from the mortgage. Indeed, it is a provision *pro tanto* for repayment of the subsidy bonds. That provision was simply a naked legal obligation, dependent for its fulfillment on the existence of net earnings. It is a duty resting upon the stockholders as long as they hold the road, and a distinct and independent duty to be performed by them. The superiority given to the first mortgage affects it in no way, and the provision for paying the 5 per cent. still remains.

As between the United States and the company, while it remains in possession of the road no change is effected in its contract. It is only when the first-mortgage bondholders come into possession of the road that they would be entitled to devote all the avails to the payment of their mortgage.

If the provision to pay five per cent. of net earnings forms part of the mortgage contract, the same result follows. The company, as represented by its stockholders, in that case should pay the second mortgagees, the five per cent. out of the net earnings as long as it was in possession. As an illustration, $5,000 is borrowed, for which a mortgage is given on a block of five stores, one of the conditions of which is that the rental of one of the stores should be applied to the payment of the interest of the mortgage; a second mortgage on the same stores is negotiated, with the agreement that it should be the first lien. The obligation or condition to pay the rental of the one store to the first, now second, mortgagee remains in force as long as the mortgagor remains in possession. It

is not affected by the priority of liens, and remains a charge to the owner, and the first mortgagee has no control over its disbursement as long as his mortgage interest is paid.

In the discussion of the question whether the United States were entitled to receive payment of the interest on the bonds as it was advanced by them, it was treated in argument, in the Court of Claims and the Supreme Court, and in the opinion of each court, that there were two sources in existence for the reimbursement of the indebtedness to the United States previous to the maturity of the bonds, viz, one-half of the transportation money and five per cent. of net earnings. (Union Pacific Railroad Company *vs.* United States, 10 Court of Claims, p. 557, Mr. Stoughton's argument; p. 581, Nott, J., opinion; 91 U. S., pp. 85, 89, Davis, J., opinion.)

The words of the act of March 3, 1873, section 2 (17 Stat., 508), "together with the five per cent. of net earnings due and unapplied as provided by law," distinctly recognize that the five per cent. of net earnings continued to be due from the railroads after the act of 1864. No more weight is claimed for it than Congressional interpretation is fairly entitled to.

FIRST, AS TO THE COMPLETION OF THE ROAD

STATEMENT OF FACTS.

The scheme of completing the road was that it should be constructed in sections originally of forty miles by the act of 1862, but afterward reduced to twenty miles by the act of 1864; that upon the completion of each section the president of the company should make oath

thereto before a court of record that the section was completed—as required by the act; that upon the presentation of an application supported by this affidavit the President was to appoint three commissioners to examine and report upon that section; and that upon their report, if the section was found duly completed as required by law, subsidy bonds and land patents were to be given in accordance with the provisions of the statute. (Act of July 1, 1862, sections 4 and 5, 12 Stat., 489.)

The president of the company did from time to time make such affidavits for all the sections of the road, the first being made June 25, 1866, and the last May 13, 1869. (Rec., pp. 19–34, Finding III.) These affidavits are to the effect that the successive sections, reckoning westward from Omaha and including in all 1,086 miles of railroad, had been "completed and equipped in all respects as required by the act referred to, as he is informed by the engineer charged with the construction of said line, and as he verily believes to be true."

As these affidavits were severally received, commissioners were appointed to examine and report upon the condition of the section of the road. Their reports were made to the Secretary of the Interior, who transmitted them to the President with the recommendation that they be approved, and that bonds and patents for lands be issued to the company in accordance with law; and upon these reports of the Secretary of the Interior was the following indorsement of the President, generally of the same date as the report:

"The within recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury

and himself are hereby directed to carry the same into effect." (Rec., pp. 34–56, Finding IV.)

Some of these early reports (Rec., pp. 34–38, Finding IV) show that the acceptance of the sections was recommended with the understanding that work should be done upon them afterward for the purpose of remedying deficiencies incident to the rapid construction of the railroad through such a region, and they likewise show that the required work for remedying the deficiencies had actually been performed before September 1, 1866. (Rec., p. 38, folio 58; p. 56, Finding V; p. 83, Finding XXIX.)

The letter of the Secretary of the Interior transmitting to the President the report of the "section commissioners" upon the eighth section, which was the section following those above referred to, is as follows (Rec., p. 39, folio 59):

"The commissioners, in their report, representing the said eighth section of thirty miles ready for present service, and completed and equipped as a first-class railroad, I respectfully recommend the acceptance of the same and the issue of the bonds and patents for land due the company on account of said section, agreeably to law."

And the recommendations of the Secretary of the Interior upon all the subsequent sections down to and including the one thousandth mile were substantially in the same form. (Rec., pp. 34–56, Finding IV.)

The Secretary of the Interior, after receiving the reports of the section commissioners upon the section of 85.88 miles constructed by the Union Pacific Railroad Company, commencing on the road of said company at the 1,000th mile-post west from Omaha, and terminating

at the 1,085.88 mile-post, transmitted them with his letter of July 15, 1869 (Rec., p. 55, folios 75–76), to the President for his action, and recommended the acceptance of the section, and the issue of bonds and of patents for lands due on account of said section, agreeably to the act approved July 1, 1862, and the acts amendatory thereof; this recommendation, however, being upon the condition "that no bonds or patents shall in any event be issued until such security shall be deposited with the Secretary of the Treasury necessary to secure the ultimate completion of the road, agreeably to the acts" of 1862 and 1864.

This security had been in fact deposited with the Secretary of the Treasury in the previous February, as will be shown hereafter, so that as regards the Union Pacific Railroad Company, at the very date of this letter of the Secretary of the Interior, July 15, 1869, the condition precedent prescribed by the Secretary of the Interior in that letter of July 15, 1869, to the delivery of the subsidy bonds and the issue of the patents for lands due upon those sections of the road, had been actually performed.

Upon the same day, July 15, 1869, the President of the United States approved the recommendations of the Secretary of the Interior, and directed him and the Secretary of the Treasury to carry the same into effect. (Rec., pp. 55–56, folio 76.)

On the 22d of July, 1869, in partial performance of the order of the President of July 15, 1869, $640,000 of subsidy bonds were issued by the United States to the claimant, that amount being the subsidy bonds due on the section from the 1,000th to the 1,020th mile from Omaha, the subsidy bonds upon all the previous sec-

tions having been received by the claimant before that time. (Rec., p. 83, Finding XXVIII.)

Up to the 6th of November, 1869, the point at which the Union Pacific Railroad and the Central Pacific Railroad should meet was not settled; but assuming that the former road would go no farther west than Ogden, 1,033.68 miles west of Omaha, the Secretary of the Treasury, on that day, ordered that bonds of the United States, at the rate of $32,000 per mile for the distance of 13.68 miles, from the 1,020th mile-post to Ogden, should be issued, but ordered that the Register of the Treasury should hold $323,488 thereof as security for the over-issue of first-mortgage bonds by the claimant, and deliver the balance of $114,272 to the claimant. In reference to the issue of the bonds for said 13.68 miles, the Secretary of the Treasury wrote the following letter, and indorsed thereon the order subjoined thereto:

"TREASURY DEPARTMENT, *November* 6, 1869.

"SIR: I have this day approved the report of the Assistant Solicitor of the Treasury, dated July 21, 1869, in which he states that the Union Pacific Railroad Company is entitled to United States bonds to the amount of six hundred and forty thousand ($640,000) dollars, being at the rate of $32,000 per mile upon the fortieth (40) section of the railroad and telegraph line of said company, commencing at the 1,020th and terminating at the 1,040th mile-post west from the initial point, near Omaha, Nebr.

"This report is referred to you for action under the following instructions: It is understood that the Union Pacific Railroad Company has issued first-mortgage bonds in excess of its legal right to issue such bonds if

their road terminates at or near Ogden, and as at present advised you are instructed to act as though the road terminated at Ogden. You will therefore ascertain the amount of such excess. If that excess does not exceed the amount of first-mortgage bonds now in possession of the government, you may issue subsidy bonds under the said report of the Assistant Solicitor of the Treasury, from the terminus of the 39th section west from Omaha to Ogden, which is understood to be about fourteen (14) miles. If, after deducting the amount of first-mortgage bonds held by the government from the excess of issues, there is still a deficit, you will subtract the deficit from the amount of bonds which would otherwise be due to said railroad upon that portion of the 40th section which is east of Ogden, and issue subsidy bonds for the remainder upon receiving proper evidence from the attorney or agent of the railroad of his right to receive the same.

"Very respectfully,

"GEO. S. BOUTWELL,

"*Secretary.*

"To J. P. BIGELOW,

"*Loan Division, Treasury Department.*"

"TREASURY DEPARTMENT, *November* 6, 1869.

"Let there be issued on this letter, to the Union Pacific Railroad Company, $437,760, being for a section of 13.68 miles, at $32,000 per mile, commencing at the 1,020th mile-post and terminating at Ogden. Of the above amount the Register will hold $323,488 as security for the over-issue of first-mortgage bonds of the road, delivering the balance, $114,272, to the attorney of the company.

"GEO. S. BOUTWELL,

"*Secretary.*"

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"GEO. S. BOUTWELL,

"*Secretary.*"

Afterward, by arrangement between the said two railroads, the place of junction was fixed at a point 5 miles west of Ogden; and thereby the claimant became entitled to bonds of the United States at the rate of $32,000 per mile for 5 miles from Ogden to the point of junction, and the same were issued to the claimant soon after the 14th of July, 1870.

The bonds so issued for said 5 miles were the last that the claimant was entitled to receive from the United States on account of the construction of said road, and they made an aggregate of $27,235,760 of bonds of the United States received by the claimant on that account.

All the subsidy bonds mentioned in this finding bore interest from the 16th of July, 1869. (Record, pp. 65–67, Finding X.)

Before the place of junction of said two roads was fixed at a point 5 miles west of Ogden, as stated in the last preceding finding, the claimant and the Central Pacific Railroad Company had agreed that the two roads should meet at some point within 8 miles west of Ogden; that claimant should build the road to Promontory Point, about 53 miles west of Ogden; and that the Central Pacific Railroad Company should pay the cost of the same; and that the claimant should draw the United States bonds to the terminus near Ogden, and the Central Pacific Company should draw the balance.

On the 6th of November, 1869, the claimant had issued $29,000,000 of first-mortgage bonds, on the basis of its completion of the road to Promontory Point; but owing to the fixing of the terminus of the claimant's road at the point 5 miles west of Ogden, that amount was $1,763,000 more than the claimant was lawfully entitled to issue. The aforesaid 1,600 first-mortgage

bonds which had been deposited as security for the completion of the road were not held by the Secretary of the Treasury after the 6th of November, 1869, as security for that purpose, but were held by him from and after that date, and until they were surrendered canceled, as hereinafter stated, on account of said overissue; and in addition thereto, on the 5th of January, 1870, the claimant deposited with the government 163 others of its first-mortgage bonds, also on account of said overissue; and on the said 7th of January, 1870, the Secretary of the Treasury delivered the said 163 bonds to the Treasurer of the United States, and directed him to hold the same, and also the said 1,600 bonds (which had been previously delivered to said Treasurer), on account of said overissue.

The said 1,763 bonds remained in the hands of the said Treasurer until the 10th of August, 1870, when, by order of the Secretary of the Treasury, they were all canceled, and returned in a canceled condition to the claimant, whose treasurer receipted for the same on the 24th day of October, 1870, and by said cancellation the said overissue was canceled. (Rec., p. 67, Finding XI.)

The bonds to which the claimant became entitled, mentioned in Finding X, remained unissued until July 14, 1870, in accordance with an agreement between the claimant and the Central Pacific Railroad Company of California. (Rec., p. 83, Finding XXX.)

The Union Pacific Railroad Company, on the 12th of February, 1869, being thereto required by the Attorney-General of the United States, as a guarantee for the ultimate full completion and equipment of said road, by its officers, signed a declaration and agreement providing substantially that, the railroad company having been

required to deposit with the Government of the United States, in the Department of the Treasury of the United States, the amount in the aggregate of $3,000,000 of their first-mortgage bonds as a guarantee that the structure and equipment of the road shall be completed in accordance with the provisions and requirements of law, and to make such deposits from time to time as said company shall receive bonds of the United States, issued to it upon the completion of successive sections of the road as provided by law, to an amount equal to one half of the amount of such bonds, until the said sum of three millions of dollars in said bonds is so deposited, declares and agrees that the first-mortgage bonds deposited, or to be deposited, shall be held by the United States as security for the completion of the structure and equipment of the road according to the provisions of the statutes of the United States providing for the building and completion of said road and equipments, and shall be so held until the President of the United States, on proper examination of the actual completed road and equipments, shall be satisfied that the same are completed as a first-class railroad according to law, the bonds to be restored pro rata from time to time, as the President, from the actual condition of the road in its structure and equipments, shall deem it no longer necessary to retain the same. At the same date the company gave their assent that patents for lands should be withheld. (Rec., pp. 56–58, Finding V.)

In pursuance of the declaration and agreement cited the Union Pacific Railroad Company on the 16th of February, 1869, deposited with the Treasurer of the United States its first-mortgage bonds to the amount of $1,600,000 (Rec., p. 58, Finding VI), which continued to

be held by the Secretary of the Treasury up to November 6, 1869, as security for the completion of the road, and after that date as security for the overissue of first-mortgage bonds by the claimant, as shown in Findings X and XI.

On the 10th of May, 1869, the last rail of the claimant's road was laid, and about a week afterward the road was opened over its entire length to public use for the transportation of passengers and freight, and for the service of the government; and this service was from that time forward performed continuously. (Rec., p. 58, Finding VII.)

On the 10th of April, 1869, was passed a joint resolution "for the protection of the interests of the United States in the Union Pacific Railroad Company, the Central Pacific Railroad Company, and for other purposes." (16 Stat., 56.)

Under the second section of this joint resolution a board of eminent citizens, five in number, was, in August, 1869, appointed by the President to perform the duty in said section prescribed, and they did perform the same; and on the 30th of October, 1869, they made a report to the Secretary of the Interior. (Rec., p. 58, Finding VIII.)

On the 3d of November, 1869, the Secretary of the Interior addressed to the Commissioner of the General Land Office a communication, a portion of which is as follows (Rec., p. 65, Finding IX):

"In addition to the bonds retained by the United States as security for the completion of said roads in the matters reported deficient or not up to standard by said commission, one-half of the lands ready for patent-

ing to the Union Pacific Company will have patents suspended until further directions from this department."

The suspension of patents for one-half of the lands ready for patenting to the claimant, which was ordered by the Secretary of the Interior in his letter of November 3, 1869, set forth in Finding IX, continued in force for more than five years after the same was ordered. In relation to that suspension the Secretary of the Interior wrote the following letter to the acting president of the Union Pacific Railroad Company (Rec., p. 67, Finding XII):

"DEPARTMENT OF THE INTERIOR,
"*Washington, D. C., February* 9, 1874.

"SIR: I have considered your letter of the 3d ultimo, in relation to the withholding from your company of patents for half the lands granted them by the acts of 1st July, 1862, and 2d July, 1864.

"The order directing such withholding was issued by Mr. Secretary Cox, on the 3d of November, 1869. It was based on the report of the five 'eminent citizens,' authorized by the joint resolution of 10th April, 1869; and the patents were to be withheld as security for the completion of your company's road in the matters reported deficient, or not up to the standard.

"During the four years that have elapsed since the issuing of said order, repeated applications have, as you state, been made to me for its rescinding or modification; applications which my sense of official duty has not permitted me to grant.

"Two examinations of the condition of the road have, of their own motion, been made by a portion of the government directors of your company, who have submit-

ted reports thereof to the department; but no examination has been made, at the instance of the department, to ascertain whether the defects reported by the 'eminent citizens' have been supplied. In the absence of legislation, directing such re-examination, it remains for the company to decide whether they will make application to the President for the appointment of commissioners for that purpose; and so I have more than once informed the agents of the company who urged the repeal of Mr. Secretary Cox's order.

"I can only repeat to you what has been said to them, that until this re-examination be made the order will not be disturbed.

"Very respectfully, &c.,

"C. DELANO,

"*Secretary.*

"JOHN DUFF, Esq.,

"*Vice-President and Acting President of Company; Office Morton, Bliss & Co., New York City, N. Y.*"

The president of the Union Pacific Railroad Company having applied for a re-examination of its said road to determine whether it had been completed according to law, the Secretary of the Interior appointed three persons to make such re-examination, under a letter of instruction dated May 14, 1874; and the commission so appointed made a report to the Secretary of the Interior, a report dated October 7, 1874. (Rec., pp. 68–75, Findings XIII and XIV.)

The Secretary of the Interior, under date of November 12, 1874, made a recommendation to the President of the United States, as follows:

"Regarding the order of Mr. Secretary Cox, of the 3d of November, 1869, as a conditional acceptance of said road, and finding that the conditions have since been amply and fully complied with, I respectfully recommend that the Secretary of the Interior be authorized to issue patents to the company for the lands inuring to it, and that said order withholding them be revoked."

And the President, on November 14, 1874, indorsed on the letter a portion of which has just been quoted as follows:

"The within recommendations are hereby approved. The authority asked for is conferred, and the order of November 3, 1869, is revoked." (Rec., pp. 74–75, Finding XV.)

On November 18, 1874, the Secretary of the Interior directed the Commissioner of the General Land Office to issue patents to said companies (the Union Pacific and Central Pacific) for all the lands inuring to them, and revoked, until further directions should be given, so much of said order of 3d November, 1869, as required the suspension of patents. (Rec., p. 75, Finding XVI.)

ARGUMENT.

The discussion under this head centers around sections 4, 5, and 6 of the act of July 1, 1862 (12 Stat., 489), as amended by the act of July 2, 1864 (13 Stat., 356), which are as follows:

"SEC. 4. That whenever said company shall have completed twenty consecutive miles of any portion of said railroad and telegraph line, ready for the service contemplated by this act, and supplied with all necessary drains, culverts, viaducts, crossings, sidings, bridges, turnouts, watering places, depots, equipments, furniture,

and all other appurtenances of a first-class railroad, the rails and all the other iron used in the construction and equipment of said road, to be American manufacture of the best quality, the President of the United States shall appoint three commissioners to examine the same and report to him in relation thereto; and if it shall appear to him that twenty consecutive miles of said railroad and telegraph line have been completed and equipped in all respects as required by this act, then, upon certificate of said commissioners to that effect, patents shall issue conveying the right and title to said lands to said company, on each side of the road as far as the same is completed, to the amount aforesaid; and patents shall, in like manner, issue as each twenty miles of said railroad and telegraph line are completed, upon certificate of said commissioners. Any vacancies occurring in said board of commissioners by death, resignation, or otherwise, shall be filled by the President of the United States: *Provided, however*, That no such commissioners shall be appointed by the President of the United States unless there shall be presented to him a statement, verified on oath by the president of said company, that such twenty miles have been completed in the manner required by this act, and setting forth with certainty the points where such twenty miles begin and where the same end, which oath shall be taken before a judge of a court of record.

"SEC. 5. That, for the purposes herein mentioned, the Secretary of the Treasury shall, upon the certificate in writing of said commissioners of the completion and equipment of twenty consecutive miles of said railroad and telegraph, in accordance with the provisions of this act, issue to said company bonds of the United States

of one thousand dollars each, payable in thirty years after date, bearing six per centum per annum interest (said interest payable semi-annually), which interest may be paid in United States Treasury notes, or any other money or currency which the United States have or shall declare lawful money and a legal tender, to the amount of sixteen of said bonds per mile for each section of twenty miles, and to secure the repayment to the United States, as hereinafter provided, of the amount of said bonds so issued and delivered to said company, together with all interest thereon which shall have been paid by the United States, the issue of said bonds and delivery to the company shall *ipso facto* constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling stock, fixtures, and property of every kind and description, and in consideration of which said bonds may be issued; and on the refusal or failure of said company to redeem said bonds, or any part of them, when required so to do by the Secretary of the Treasury, in accordance with the provisions of this act, the said road, with all the rights, functions, immunities, and appurtenances thereunto belonging, and also all lands granted to the said company by the United States which, at the time of said default, shall remain in the ownership of the said company, may be taken possession of by the Secretary of the Treasury, for the use and benefit of the United States: *Provided*, This section shall not apply to that part of any road now constructed.

"SEC. 6. That the grants aforesaid are made upon condition that said company shall pay said bonds at maturity, and shall keep said railroad and telegraph line in repair and use, and shall at all times transmit dis-

patches over said telegraph line and transport mails, troops, and munitions of war, supplies, and public stores upon said railroad for the government whenever required to do so by any department thereof, and that the government shall at all times have the preference in the use of the same for all the purposes aforesaid (at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service), and one-half of all compensation for services rendered for the government shall be applied to the payment of said bonds and interest until the whole amount is fully paid. Said company may also pay the United States, wholly or in part, in the same or other bonds, Treasury notes, or other evidences of debt against the United States, to be allowed at par, and after said road is completed, until said bonds and interest are paid, at least five per centum of the net earnings of said road shall also be annually applied to the payment thereof."

It has been found by the court that all acts necessary to be done in accordance with the provisions of these sections were performed on the part of the railroad company by the building of successive sections of road and telegraph line, supplied with all necessary drains, culverts, viaducts, crossings, &c., by the presentation of statements, verified on oath by the president of the company, that each section had been completed in the manner required by the act, and, on the part of the President and executive officers, by the appointment of commissioners to examine and report in relation to such sections, and by the issue to the company of bonds of the United States of $1,000 each to the amount of sixteen such bonds per mile on some sections and of thirty-two and

forty-eight bonds on other sections on one thousand miles of the road.

The last act necessary to acquire title to the land patents and bonds of the United States was done by the President on February 9, 1869, in relation to the one thousand miles.

It was ultimately established that the Union Pacific Railroad extended 1,038.68 miles west of the initial point on the Missouri River, near Omaha, to the western terminus of the road.

It remains for the United States to satisfactorily establish the completion of the 38.68 miles of the Union Pacific Railroad on or before November 6, 1869.

The findings of the court, taken in connection with the law already cited, conclusively establish the accomplishment of the completion of this section of the road before the date fixed by the United States.

The Secretary of the Interior, by letter of July 15, 1869, recommended to the President of the United States that, as the remaining part of the road west of the one-thousandth mile post had been reported by the commissioners as "ready for present service and completed and equipped as a first-class railroad," after the sworn representation of the president of the road that such was the case, bonds and patents should be issued to the Union Pacific Railroad Company upon the section from the one-thousandth mile-post to the common terminus of the Union Pacific and Central Pacific roads, "at or near Ogden" (which was a little over thirty-three miles west of the one-thousandth mile-post): *Provided, however*, That no bonds or patents shall in any event be issued until such security shall be deposited with the Secretary of the Treasury necessary to secure

the ultimate completion of the road." The President of the United States approved the recommendation of the Secretary of the Interior and directed the Secretary of the Treasury and himself to carry the same into effect.

It thus appears that from the 15th of July, 1869, the railroad company was entitled to receive from the United States the subsidy bonds and land patents due upon the sections of the road beyond the one-thousandth mile-post. And toward the close of the month of July, 1869, the company did receive subsidy bonds upon the section from the one-thousandth to the one-thousand and twentieth mile-post, and on the 6th day of November, 1869, it received from the government subsidy bonds upon the remaining thirteen and sixty-eight one-hundredths miles from the one-thousand and twentieth to the one-thousand and thirty-three and sixty-eight one-hundredths mile-post, less such portion of the subsidy bonds as were retained as security for the overissue of first-mortgage bonds, and also subsidy bonds were issued upon a portion of the road five miles west of Ogden, but were retained in pursuance of an agreement between the two roads that the United States should hold the same until the common terminus should be established, which was not fixed until July 12, 1870, and two days later, July 14, 1870, subsidy bonds for such portion of the road were delivered to the railroad company, and all the first-mortgage bonds that had been deposited as security for the completion of the road in February, 1869 (which will be discussed hereafter), and subsequent thereto, were retained from and after the 6th of November, 1869, because they were an overissue, and were so held as an overissue from the 6th of Novem-

ber, 1869, until August 10, 1870, when they were returned to the railroad company canceled.

It should be now stated that the security of bonds recommended by the Secretary of the Interior to be exacted from the Union Pacific Railroad Company was in fact then in the hands of the Secretary of the Treasury to the amount of $1,600,000, which had been deposited with him under an agreement of the 12th of February, 1869, the nature and import of which will be referred to hereafter.

It thus appears that the President of the United States had, on the 15th of July, 1869, accepted every section of the Union Pacific Railroad Company, and that the right of the Union Pacific Railroad Company to the subsidy bonds and the patents for lands granted by the act of 1862 had become vested, and that the Secretary of the Treasury, who was ordered by the President to carry into effect his recommendations of July 15, 1869, as to the delivery of subsidy bonds, had complied with those recommendations in full on the 6th of November, 1869, and that therefore from that date the road must be held to be completed, and accepted as complete, as required by the act of 1862.

As the act of 1862 (sections 4, 5, and 6) clearly marks out the conditions and covenants, which are within a narrow limit, to control the undertaking of the construction of the Union Pacific Railroad under governmental patronage, so in the ascertainment of the questions at issue the performance or non-performance only of those conditions and covenants is important.

When the fact of completion of any section of the road was established and declared in the way prescribed in the act, that fact was finally and immovably settled and

determined as between the Union Pacific Railroad Company and the United States, and could not be unsettled or changed by any executive authority, nor, except for fraud, by any judicial authority.

The sections of the act of 1862 fixed the test of a completed railroad. The sectional requirements were those of a first-class railroad, and successive and completed and accepted sections formed, up to and including the last mile-post, the completed railroad. What the President of the United States and the Secretaries and Attorney-General may have decided the company could do in the way of modifying the requirements of the statute as to the elements entering into and necessary for completed sections, the company are now estopped from asserting to the detriment of the rights of the United States. The same statute which provided for the issuing of land patents and subsidy bonds for completed sections made it obligatory upon the president of the company to make oath that the successive sections had been completed in the manner required by the act, viz, ready for the service contemplated by the acts, and supplied with all necessary drains, culverts, viaducts, crossings, sidings, bridges, turnouts, &c., and all other appurtenances of a first-class railroad, and it was made a condition that the commissioners to examine and report upon the sections should not be appointed by the President of the United States unless the president of the company presented to him this sworn statement.

As without such sworn statements, verified by the commissioners, the President of the United States and Secretary of the Treasury were not permitted by the statute to issue bonds of the United States to the company, so, in receiving the bonds issued on every section, thus de-

riving large pecuniary interest from their delivery, the railroad company is presumed to have complied with the provisions of the act of 1862 in every respect, and to have carried out its part of the contract in good faith. The last section was accepted July 15, 1869, and the bonds subsequently issued bear interest from that date. The attorneys of the United States, following the demand made by the Secretary of the Treasury on the Union Pacific Railroad Company for five per cent. of its net earnings, in accordance with the act of June 22, 1874 (18 Stat., p. 200), from November 6, 1869, and the action of the Secretary of the Treasury of November 6, 1869, adopt November 6, 1869, as the date of the completion of the road, although the claim might with propriety have been made that the road was completed on July 15, 1869, by the action of the President of the United States, in accepting the last sections of the road on that date, within the terms of section 4, act July 1, 1862.

THE DECLARATION AND AGREEMENT OF FEBRUARY, 1869.

It has been shown that in February, 1869, an agreement was entered into by the Union Pacific Railroad Company in reference to the deposit of first mortgage bonds as a guarantee that the construction and equipment of the road should be completed in accordance with the provisions and requirements of law. Although the Union Pacific Railroad was required by the Attorney-General of the United States to execute those papers, that fact can give no force and efficacy to the proceedings. These agreements were voluntary on the part of the company, and were without any express authority

of law, there being no statute that vested the Attorney-General with any control over the action of the Union Pacific Railroad in the premises. Whatever force and effect the agreement of February, 1869, may have had, the joint resolution of April 10, 1869 (16 Stat., 56), became of paramount authority in all that related to the deposit of security by the Union Pacific Railroad Company as a guarantee for the completion of the road. The second section provided for the appointment of a board of eminent citizens to examine the Union Pacific and Central Pacific roads "and report upon the condition of, and what sum or sums, if any, will be required to complete each of said roads, for the entire length thereof, to the said terminus as a first-class railroad, in compliance with the several acts relating to said roads." Section 3 provided that the President should withhold from each of said companies subsidy bonds sufficient to secure the full completion as a first-class road of all sections of such road upon which bonds had already been issued, or in lieu of such bonds he might receive an equal amount of first-mortgage bonds of such company as such security.

It is quite clear that the only security authorized by the joint resolution of April 10, 1869, to be received by the United States as security for the completion of the whole road was either subsidy bonds, or, in lieu thereof, first-mortgage bonds of such company. There is no provision in this resolution, and no express provision of law anywhere, authorizing the withholding of patents for lands as security for such completion. It is important that this fact should be borne in mind, especially as the joint resolution was passed after the agreements of February, 1869, had been signed by the officers of the

Union Pacific Railroad and deposited with the Attorney-General.

The board of eminent citizens authorized by the joint resolution of April 10, 1869, made their report to the Secretary of the Interior under date of October 30, 1869, showing that the road had been substantially completed at that date.

The action of the Secretary of the Treasury upon the report of the board of eminent citizens has already been shown, who, as there stated in substance, decided, on November 6, 1869, that the road was completed as required by law, and directed that all subsidy bonds deliverable to the road should be delivered (upon the final sections of the road), and that all the first-mortgage bonds which had been deposited in February, 1869, and which had been held after July 15, 1869, as security for the completion of the last sections of the road, should be surrendered to the road, excepting only such portion thereof as were retained because of the over-issue.

If anything was necessary in order to a complete acceptance of the road, beyond the acceptance by the President of each individual and successive section, as it was proved to him to be completed, it was done.

The officer of the government upon whom was devolved the duty of determining whether the proper security had been deposited for the ultimate completion of the road having decided that such security had been deposited, and then having decided that the road was completed, and ordered the surrender of deposited security, determined thereby, for all purposes, that the road was completed; and all officers of the government, as well as the road, are bound by his act.

LETTER OF SECRETARY OF THE INTERIOR OF NOVEMBER 3, 1869, TO THE COMMISSIONER OF THE GENERAL LAND OFFICE.

It was not within the proper authority of the Secretary of the Interior to direct the withholding of patents for one-half the lands due the company, as he undertook to do in this letter, nor does it appear to have had the concurrence of the President. The road had acquired an absolute right to the land patents due on the sections prior to and including the one-thousandth mile; and for the patents for lands due to the company on the portion of the road west of the one-thousandth mile the Secretary of the Interior, by his letter of July 15, 1869, had decided that the patents for lands should issue, subject only to the condition precedent of the deposit of security, which condition had been performed, as already stated. The Secretary of the Interior could not, therefore, legally interfere with the vested rights of the railroad company, as he attempted to do by his letter of November 3, 1869. His action in writing that letter was like the action of the Secretary of the Treasury directing that the payment for half transportation should be withheld from the Union Pacific and other railroads, because of, and as an offset to, the then alleged claim of the government for reimbursements of money paid for interest on the subsidy bonds. (See U. S. *vs.* Union Pacific R. R. Co., 91 U. S. Rep., pp. 72, 90.) And the refusals of the Secretary of the Interior from time to time, from that date down to November, 1874, to comply with the requests of the railroad company, that he should issue the withheld land patents, were likewise without authority of law, so far as such refusals were made for the

purpose of holding such land patents as security for the completion of the road.

These refusals could not affect the position of the road as a road completed for the purposes contemplated by the act.

The claim was continuously made, during the year 1869, by the president of the company, that the road was completed in accordance with the requirements of the statutes, and this was the sworn statement.

Between November 3, 1869, and May, 1874, the president of the Union Pacific Railroad made repeated applications for the rescinding of the order of Secretary Cox of November 3, 1869, directing the withholding of patents for half the lands granted by the acts of 1862 and 1864.

Finally, in May, 1874, three commissioners were appointed to examine the Union Pacific Railroad, although "in the absence of legislation directing such re-examination," as the Secretary says in his letter of February 9, 1874, to the vice-president of the company.

The commissioners, after examination, reported that the road was completed as a first-class railroad on October 1, 1874. The approval by the President of the report of this commission, which fixed October 1, 1874, as the day of completion, gave its conclusions no additional validity, and could not of itself be taken as an authoritative determination of the question of the completion of the road, if, by his prior acts, and those of the Secretaries, indicating the completion of the road years before, the obvious intention of the different acts of Congress had been complied with, or if he exceeded his power by fixing a wrong date for the completion of the road, under a mistake of law and fact. The acts of

the Executive are to be considered legal only when they are within the general or express authority pointed out by the Constitution and laws.

The President of the United States had taken all the action necessary to conform to the requirements of the statute, and this action showed a completion of every section of the road as early as July 15, 1869. Nowhere does the statute give him the authority to determine the final completion of the road, or the completion of the road as a whole. The authority vested in him was to determine the completion of each section, and the completion that was contemplated by the statute, in sections 4 and 6 now under discussion, was a completion of each and every section of the railroad.

The order of November 3, 1869, withholding one-half of the patents as security for the completion of the road, was beyond the power of the Secretary of the Interior to issue; so all subsequent action respecting the withholding of the land patents, as far as it was attempted to affect the question of the completion of the road, was illegal and void.

The report of a commission appointed without authority of law, when approved by Secretary and President, and a declaration made on their part that matters stated therein are accepted as true, and certain acts should be done in accordance therewith, can claim no validity on account of this indorsement, especially as everything connected with the commission was plainly not in accordance with any statute, as the Secretary of the Interior himself stated.

As the road was the creature of the statutes, and the only authority and guide for executive action was to be found in such statutes, it becomes of vital importance

to the claimant's case to show that the withholding of land patents after July 15, 1869, was in accordance with some statutory provision of law. As this cannot be done, it necessarily follows that such withholding of land patents was unauthorized.

The learned counsel for the Union Pacific Railroad Company relies upon the acts of the President of the United States and the Secretary of the Interior after November, 1869, as forming the basis of the claim that the road was not completed, within the meaning of the act of 1862, until October 1, 1874. The action of the parties, as far as it conformed to the act of 1862, however, furnishes him no ground-work for this claim; on the contrary, the evidence showing the sworn statements of completion of successive sections, in accordance with the requirements of the act, and the performance of the service required over the whole line, the issue of the United States bonds to the company, and other matters before referred to, raises the strongest possible presumption of law that everything which ought to have been done was done. As a necessary conclusion, within the contemplation of the act of 1862, the road was completed at the date of the acceptance of the last section of the road and the issue of the subsidy bonds for the whole road as completed. Certain requirements being observed, the road became completed by operation of law, and not by the action or want of it by the Executive.

It may also be added that the language of section 5, act 1862, "shall *ipso facto* constitute a first mortgage," &c., and "in consideration whereof," &c., taken in connection with the clause of the sixth section, establishes that as the law provides that all the bonds to which the

company were ultimately entitled should not be issued unless the successive sections and the whole road were completed, so the issue of bonds on all sections of the road raised a pecuniary obligation on the part of the company to pay five per cent. of its annual net earnings *eo instanti*.

The United States having issued all the bonds provided for by law, as to a completed road, was entitled under section 6, act 1862, to have five per cent. of net earnings applied annually for their liquidation, the first annual period to begin on the date of the last bond issued.

The statute demanded that when certain acts were done a certain other thing should be the result, and no understanding of the company, outside of the statute, even with United States officials, can avail it to prevent estoppel from operating against the present defense of the company as to the time of completion. A waiver of the condition of the requirements of the successive sections (but the findings of the Court of Claims fail to disclose such waiver) cannot be accepted as a waiver of the result which the statute provided should follow the accomplishment of other conditions, *i. e.*, the completion of the road, for the reason that statutes can only be repealed or legally waived by subsequent statutes, and never by executive action.

This obligation to apply five per cent. of the net earnings, however, is dependent only upon the fact of the completion of the road. It is entirely independent of the fact whether all the subsidy bonds or land patents due have been issued. The fact of the non-issue of such bonds and patents may be a circumstance, with others, tending to show the road was not completed; but if the

road was in fact completed, the non-issuing of the bonds and patents would be no excuse for the non-payment of the five per cent. of net earnings, although, as it has been argued, the issue and delivery of the bonds absolutely estops the company from setting up non-completion immediately after such delivery.

THE MEANING OF THE WORDS "COMPLETE," "COMPLETED," AND "COMPLETION."

These words are frequently used in the statutes relating to the Union Pacific Railroad, and always substantially in the same sense as in the 4th section of the act of 1862, where they are used sometimes with the qualification "ready for the service contemplated by this act," or "as required by this act," or "in the manner required by this act," or without limitation, but always in the same sense. The standard of completion is uniform throughout the acts, accepted by the company, and constituting its charter, and is the same whether in reference to the obligations to be performed or the benefits to be received by the company; whether it is to receive patents for lands, as by the 4th section of the act of 1862, or subsidy bonds, as by the 5th section; or to apply 5 per cent. of its net earnings, as by the 6th section, or to issue its first-mortgage bonds, as by the 10th section of the act of July 2, 1864; or to construct a certain portion of the road by a given time, as by the 7th section of the act of 1862; or so that the cars can be running over the whole length, as by the 12th section of the last-named act; or as in the provision for the forfeiture of the road, in the 17th section of the act of 1862, where the degree of completion required is that the road shall be com-

pleted "ready for use," that is, "ready for the service contemplated by" the act of 1862.

A good test of the completed condition of the road on the 6th of November, 1869, is this: Suppose that the road had not been constructed with such rapidity, and that the time had arrived when it was to be forfeited if not completed ready for use, and at that time it was in the precise condition in all respects that it was on the 6th of November, 1869, would the company, under such circumstances, have been found admitting that the road was not completed, and submitting quietly to a forfeiture? Could the United States, under such a condition of things, have obtained a decree of forfeiture?

The Court of Claims, having found that each section was completed according to law, have necessarily found that the whole road was so completed. There was no provision for completion except the completion of all the several and successive sections. Completion is a question of fact, and the United States are entitled to hold that that fact has been found in their favor, and that this question is so settled decisively unless the court is able to see that upon the facts as they appear in the case, in connection with the law, the Court of Claims could not properly have so found. Can it be maintained that, by postponing the issue of half of the land patents, the Secretary of the Interior postponed the completion of the road?

It is to be borne in mind, in considering the question, that the statutes constituting the charter of the railroad company have but one standard of completion, and it also may be well urged that if such completion was sufficient to authorize the company to receive the subsidy bonds, it should and must be sufficient to require it to

perform the pecuniary obligations due on such completion of the road; and that, if such completion was sufficient to permit it to receive the equivalent of upward of twenty-seven millions in subsidy bonds, it should and must be sufficient to require it to pay the small percentage of its net earnings, after the whole road has been so completed. Further, if the company, by representations that its road was completed, upon which the United States acted and delivered to them the subsidy bonds because thereof; or if a standard of completion different from the charter standard was agreed upon, either expressly or impliedly, upon reaching which the railroad company was to receive, and did receive, the subsidy bonds; or if a standard of completion was assumed upon reaching which, with assurances by the railroad company that further sufficient work and money were to be expended on said road the company received the subsidy bonds and left patents as collateral security for such expenditure; upon either or any of these supposed cases, if the road was accepted as completed by the United States, and the subsidy bonds were delivered or were ready for delivery, and patents for lands were retained by the United States solely by reason of the agreement with the railroad company, then the railroad company would be estopped to deny the completion of the road, or that it had made good its assurances of completion, and the road would in law be deemed so completed, that the company would be liable to pay the 5 per cent. of the net earnings due upon completion of the road, as soon as there were any net earnings upon which the 5 per cent. could be computed. This view is in accordance with the remarks of Mr. Justice Davis, in the case of The United States *vs.* The Union Pacific Railroad

Company, 91 U. S. Rep., p. 72: "There could, however, be no reasonable objection to the application 'of all compensation for services rendered for the government' from the outset, and '5 per cent. of the net earnings after the completion of the road,' to the payment of the bonds and interest, and these exactions were accordingly made."

WHAT ARE NET EARNINGS?

The term "net earnings" in the acts constituting the charter of the railroad company is found only in sections 6 and 18, act of 1862. In section 6 the clause now the subject of controversy is as follows: "And after said road is completed, until said bonds and interest are paid, at least five per centum of the net earnings of said road shall also be annually applied to the payment thereof." Section 18 provides "That whenever it appears that the net earnings of the entire road and telegraph, including the amount allowed for services rendered for the United States, after deducting all expenditures, including repairs and the furnishing, running, and managing of said road, shall exceed ten per centum upon its cost (exclusive of the five per centum to be paid to the United States), Congress may reduce the rates of fare thereon, if unreasonable in amount, and may fix and establish the same by law."

The United States contend that the words "net earnings," in the sixth section of the act of 1862, were used in the sense in which they were then used in ordinary acceptation, or as technical in regard to railroads, as meaning the gross earnings of a railroad in its capacity as a carrier and instrument for carrying, less the expenses of acquiring those earnings, including in these

expenses the cost of keeping the road and its equipment good. Repairs, in kind, of existing structures, taxes, services, supplies, are to be included; payment for construction, interest for debts, &c., to be excluded. Gross earnings, less legitimate expenses of the kind above enumerated.

From general knowledge and publications respecting railroads, such as Poor's Manual, the official reports of railroads in Massachusetts, and the reports of the leading railroads in New York, Pennsylvania, and the West, it is fairly to be contended that such use obtains.

That this is substantially the interpretation put upon these words by the company is shown by the language of its income bonds, issued on September 1, 1869. The bonds provide that for the purpose of securing the payment of interest attached to such bonds, the company "has agreed to devote the net earnings of its said railroad, after deducting therefrom (*i. e.*, the net earnings) the payments of interest that shall fall due upon the first mortgage of its road, and also upon the mortgage of its lands, heretofore made, and already issued or to be issued by it," to the payment of such interest-warrants; and the said claimant further agreed, in said bonds, to make up and furnish, on the 1st day of January of each year, to the trustees named, "a fair and just account of the net earnings of said road for the six months next preceding, and will deduct therefrom the interest due and payable from it upon the first mortgage of the road heretofore issued, and upon its land-mortgage bonds heretofore issued or to be issued."

In the case of the two railroads of equal length, properly constructed and equipped in the same manner, and at the same cost, and both in the same state of repair, both doing a profitable business of the same kind

and amount, and at the same cost, the construction and equipment of the one having been paid for in cash derived from full paid subsciptions to the capital stock, and those of the other being paid for in cash realized from loans secured by mortgage of the road and its equipment, there would be no difference in the net earnings of the two corporations because of the different manner in which the money was obtained with which the cost of their construction and equipment was paid.

The exact definition of net earnings, in railroad parlance, is given by Judge Blatchford, in the case of St. John *vs.* The Erie Railway Company, 10th Blatchford's Reports, 271, 279:

"Net earnings are, properly, the gross receipts, less the expenses of operating the road to earn such receipts. Interest on debts is paid out of what thus remains, that is, out of the net earnings. Many other liabilities are paid out of the net earnings. When all liabilities are paid, either out of the gross receipts or out of the net earnings, the remainder is the profit of the shareholders to go towards dividends, which, in that way, are paid out of the net earnings. That this is the meaning of the expression 'net earnings,' in the contract, is shown by the fact that the contract states that the trustees are to receive the net earnings, and out of them to pay the floating debt, and the delayed coupons, and by the further fact that the contract, the statute, and the certificates state that the mortgage interest is to be paid out of the net earnings, by stating that the preferred dividends are to be paid out of the net earnings 'after payment' (that is, out of the net earnings) 'of mortgage interest.'"

The case was heard on appeal in the Supreme Court,

and the court (22 Wallace, p. 136) sustained the decision of Judge Blatchford. There is nothing in the opinion of Justice Swayne that stands in the way of the view taken by the United States as to the meaning of the term "net earnings," as the Supreme Court did not determine the meaning of "net earnings," but merely gave a definition of the word "net." The definition of "net earnings" given by Judge Blatchford in the case below was not overruled or controlled by the opinion of the Supreme Court. Indeed, in the view taken by the Supreme Court of the contract which was to be construed, the question of what constituted "net earnings" did not become material. The facts of this case show the use of the term "net earnings" in legislation and agreements respecting railroads in 1859, and are briefly these:

The corporation called the New York and Erie Railway Company had several classes of debts secured by mortgage on its road; it also had bonds not thus secured to a large amount. The road became bankrupt, and the shareholders and creditors of the company by an amicable agreement, which was sanctioned by the statute organizing a new corporation under the name of the Erie Railway Company, provided that the mortgage debt of the old company should have the first lien under the new corporation, and the capital stock thereof should be divided into common capital stock and preferred capital stock; the preferred capital stock was to be equal to the amount of the unsecured and judgment debts of the old corporation, and the common stock was to be issued for the capital stock of the old corporation; and in the agreement it was provided that "such preferred stock was to be entitled to preferred dividends out of the net earnings, not to exceed 7 per cent. in any

one year, payable semi-annually, after payment of mortgage interest and delayed coupons in full."

Mr. Justice Swayne, in giving the opinion of the court, on page 147 says: "The maximum payable in the preferred stock was specified. It might be less, or nothing. It could not be more. The amount subject to the limit prescribed depended wholly upon the residue of the net earnings applicable in that way." From which it is clear that the interest of the mortgage debt was to be paid from the net earnings, and the residue of the net earnings spoken of by the court was that portion of the net earnings that remained after the interest of the mortgage debt had been paid therefrom.

The lexical definition of "net," as given by Webster, and adopted by Justice Swayne in St. John *vs.* The Erie Railway Company, is "clear of all charges and deductions." Worcester: "That which remains after deduction of all charges or outlay, as 'net profits,' clear of all tare or tret, or other deduction, as 'net weight.'" The word "net" means "clear"—clear of charges and deductions, and the charges and deductions that are to be cleared depend upon the subject to which the word net is applied. Thus the charges and deductions to be deducted from gross weight to make net weight are different from the charges and deductions from gross earnings to make net earnings, or from gross income to make net income, or from gross profits to make net profits. As to earnings, Worcester gives as the definition: "That which is earned; wages; reward of labor." As the words "income" and "profit" have been used in the record, and in argument by the company, as synonymous words to earnings, the lexical definition of them will be of service to show that they are not synonymous. Wor-

cester says: "Income: gain derived from any business or property; produce; profit; revenue." "Profit: the amount of money obtained by the sale of commodities above the cost of purchase or production; pecuniary gain; emolument." The "earnings" of a road had acquired in 1862 a specific meaning; its earnings as a common carrier from the transportation of persons and goods. "Net earnings" is the sum remaining after deductions from the earnings such expenditures as were necessary to obtain the earnings—to earn that which is earned. Debts are to be paid out of such net earnings. The habitual and general use of the term is the same, as has been shown in the case of St. John *vs.* The Erie Railway Company (10 Blatchford, 271–279).

In Eyster *vs.* The Centennial Board of Finance, 94 Sup. Ct. Reports, p. 506, while the word "earnings" was not under discussion, the principle which the United States now contend for was recognized. It was said that under the acts of Congress (June 1, 1872, 17 Stat., 203, and February 16, 1876, 19 Stat., 3) the word "profits" must be held to be synonymous with receipts, and that the receipts of the exhibition over and above its current expenses were the profits. They are in fact the net receipts, which, according to the common understanding, ordinarily represent the profits of a business. (Page 503.)

In the 18th section, the explanation of what were net earnings, or how they were to be reached, is in harmony with the view of the United States, heretofore stated. The whole section may be construed in various forms, but all having the same meaning; first, "that whenever the net earnings of the entire road and telegraph line, including the amount allowed for services

rendered for the United States, shall exceed 10 per cent. upon the cost of the road in addition to the 5 per cent, on net earnings to be paid in, as provided in 6th section, that Congress may reduce rates of fare, &c.; or, second, when net earnings, less 5 per cent. thereon to be paid to the United States, shall exceed 10 per cent. on cost of road Congress may reduce, &c.; or, third, when net earnings of the entire railroad, &c., which are reached by deducting from the gross earnings, which shall include the amount allowed for services rendered for the United States, all expenditures, which include repairs and the furnishing, running, and managing of said road, shall exceed 10 per cent. upon the cost of the road (first deducting from the net earnings the 5 per cent. to be paid to the United States), Congress may reduce, &c. It is of no importance whatever whether 100 per cent. or 95 per cent. of net earnings is to exceed 10 per cent. of the cost of the road.

If it be argued that the words "net earnings," as used in section 18, act of 1862, are to be construed as earnings applicable to dividends (whether divided or not), the reply is, that the object of the section is not, after allowing earnings for the purpose of dividends, viz, 10 per cent., to enable government to reduce the tolls, but its object is, after net earnings have been received equal in amount to 10 per cent. *upon the cost of the road*, to invest the government with this power.

While it is not considered that any different meaning can be given to the term "net earnings," as used in section 18, than when it is used in section 6, yet a rule might well be made more favorable to the company in the former section, as it was the condition upon which

the high power of reducing its tolls was to be exercised.

No interest was to be deducted within the meaning of the 18th section, for the act of 1862 did not contemplate any interest to be paid, as the first-mortgage bonds were issued on the authority of the 10th section, act of 1864, and the interest on subsidy bonds was not to be paid until the maturity of the bonds.

EXPENDITURES.

Applying the principles contended for by the United States, it is respectfully submitted that the items and amounts disallowed by the court below for expenditures made by the company cannot properly be charged to expenses or affect in any way the computation of net earnings. Considering first the items of expenditures chargeable to operating accounts, there are various subitems to be deducted therefrom, viz: Under item 1, "Conducting transportation expenses," are subitems "Tenement-houses and hotels" and new "Station buildings"; under item 2, "Motive-power expenses," are subitems "Engine-equipment" and "Tanks and waterworks"; under item 3, "Maintenance of car expenses," is the subitem "Car-equipment"; under item 4, "Maintenance of way expenses," is the subitem "Laramie rolling-mills." (Record, pp. 78,79.)

The buildings and equipment mentioned are new construction (Record, p. 80, folio 100), and for this reason the expenditures on their account should not be deducted from gross earnings to reach net earnings. In the practical work of all railroad companies the cost of all improvements that add value and increased stability to the property of the company, over the original value, are properly chargeable to construction. Whether these

expenditures ultimately add to the net earnings of which the United States are entitled to 5 per cent. is not to be considered. The method by which net earnings are arrived at must be founded upon some principle the result of practical experience and scientific knowledge, and the gain or loss to the United States or the company is an incident to its application, and not the principle itself.

Under item 13, "Expense account" (Record, pp.78, 79), are expenses relating to an issue of bonds, $10,339.76; cost of a plate for the bridge bonds, $1,500, and an expense relating to the issue of sinking-fund bonds, $6,579.10. These are chargeable to income account, to which, also, net earnings are credited.

Item 16, "Use of cars of other companies," is a proper expenditure as part of the operating expenses of the road.

Items 17, 20, 21, 22, 23, 24, and 25 show payments of interest on debts (Record, pp. 78, 80).

The proposition to deduct these items from gross earnings assumes that the net earnings of the property of the railroad company is the same as the net income of the owners of the property. What net earnings are has already been discussed. *From* them is paid the interest on various classes of security, the holders of bonds first as creditors, and the stockholders next as debtors and owners of the property. Earnings clear of all expenses necessary to earn them are net earnings. The example given on page 44 of this brief shows the application.

Items 18 and 19, payments on account of the land department (Record, pp. 78, 80.), obviously are excluded from the legitmate expense account, so far as concerns net earnings. They have no connection with the business of the road as a common carrier and bear no rela-

tion to the capacity of the road to make earnings. Earnings are made without such expenditures.

Item 26, "Construction of Omaha bridge" (Record, pp. 78, 80). This is chargeable to construction account for the reasons given on other similar items.

Items 28 and 29 show expenditures made for a sinking fund for the redemption of the company's debt. A debt, or any part of it, cannot be chargeable to earnings as a means of obtaining those earnings, as it has nothing to do with the road in its capacity as earner of freight money.

Item 30, "United States interest half transportation accounts charged during the year," is a debt of the company. The fact that the United States withhold the amounts and credit them to the subsidy bonds issued as payments in account (sect. 6, act July 1, 1862; sect. 5, act July 2, 1864) gives them no different character from other debts owned by the company.

EARNINGS.

As tenement houses and eating houses (item 13) are auxiliary to the running of the railroad as a common carrier, and as the expenses necessary to keep them in repairs form part of the legitimate expenditures of the company, so the rents and earnings from them should be included in the gross earnings of the road. (Record, pp. 76, 77.)

Item 11, "Car-service earnings," are the rents paid by other companies for the use of the cars belonging to the Union Pacific Railroad Company, and is a necessary charge to the gross earnings of the company's property.

By this method of calculation the net earnings of the railroad company during the period beginning Novem-

ber 6, 1869, down to and including November 5, 1875, amounted to $28,052,045.67, 5 per cent. of which was $1,402,602.28, which the United States is entitled to, and for which judgment has been rendered by the Court of Claims. Deducting one-half the compensation for services rendered by the claimant, namely, $593,627.10, from the amount above given, the judgment of the court in favor of the United States for the balance, $808,975.10 should be sustained.

CHARLES DEVENS,
Attorney-General.
JOS. K. McCAMMON.

United States Circuit Court,

NINTH JUDICIAL CIRCUIT.

DISTRICT OF CALIFORNIA.

THE UNITED STATES OF AMERICA

vs.

CENTRAL PACIFIC RAILROAD COMPANY.

1.—CENTRAL PACIFIC RAILROAD—WHEN COMPLETED.

The Central Pacific Railroad Company did not become liable to apply five per centum of the net earnings of the Central Pacific Railroad annually to the payment of the subsidy bonds, and interest thereon, issued to said company by the United States in pursuance of the acts of congress authorizing the construction of the said road, till October 1, 1874, the date of the completion of the road as accepted by the President of the United States, and the day upon which it was in fact completed in accordance with the requirements of said acts. SAWYER, Circuit Judge.

FINDINGS AND JUDGMENT OF THE COURT.

The following facts are established by the evidence: By direction of the President, a board of engineers and men

familiar with railroads was convened to consider and report a standard for the construction of the Pacific railroads, by which the companies should be governed in building the roads, and the commissioners appointed under the acts of congress for the purpose, in their examinations and reports upon the roads constructed. In February, 1866, this board reported a standard, which was approved and afterwards acted upon by the President. In their report, the board, among other things, say,—

"Culverts and abutments for bridges and drains should be of stone, whenever a durable article can be obtained within a reasonable distance—say from five to eight miles—depending upon circumstances; provided, that temporary trestles may be adopted upon assurances, to the satisfaction of the commissioners, that stone abutments will be substituted immediately after the line shall be opened, so that stone can be transported thereon." * * * *

A RAILROAD NOT COMPLETE UNTIL WELL BALLASTED.

"A railroad cannot be considered complete until it is well ballasted. If composed of gravel, or broken stone, it should be from twelve to twenty-four inches thick, depending on the lower material. In view of the settling of new embankments, which require time and rains before ballasting can be properly placed, and also in view of the number of miles required by the law to be constructed annually, the perfect finish of the road-bed in this respect must be progressive, and the work of time. Yet it is the opinion of the board that such work of perfecting the ballast must proceed as usual on first-class railroads; otherwise subsequent sections should not be accepted, because the whole work is not then being carried forward as a great Pacific railroad, such as the law contemplates." It is also specified what should be required as to location, grades and curves, embankments and excavations, cross-ties, rails, sidings, rolling-stock, buildings, etc. The report, recognizing the impracticability,

as a business transaction, of completing a long line of road like the Pacific Railroad in sections of twenty miles each, so that each section shall be brought up to the standard of a first-class road as soon as constructed, clearly made a distinction between a provisional and an absolute completion; and this distinction was recognized and acted upon by the President subsequently, who accepted the sections, when constructed up to the temporary standard, provisionally, for the purpose of issuing the bonds to enable the companies to proceed with the work, but with the understanding that the deficiencies should be supplied so as to ultimately bring the whole road as an entirety up to the standard of a first-class road before a final acceptance as absolutely completed as a whole.

ACCEPTANCE OF THE ROAD IN TWENTY-MILE SECTIONS.

As each section of twenty miles or more of the road was constructed, the president of the company filed a statement, under oath, in pursuance of the statute, to the effect that the section, describing it, had been completed as required, specifying the particulars in the language of the statute, and asking that the commissioners appointed under the statute might be notified, and that they might examine and report upon such section. Upon a favorable report by the commissioners, the President accepted the section provisionally, and issued to the company the bonds authorized by the statute. This was the course of proceeding till 1868, when it was found that the government might advance all the subsidies upon a road only provisionally accepted in sections, and have no security for its absolute completion, as a whole, up to the standard of a first-class road. The question of the propriety of this course was submitted to the attorney-general, who rendered an opinion on September 5, 1868, which was to the effect that the course before pursued by the government was in accordance with the law, and that the President had authority to appoint commissioners to

review that portion of the road which had been accepted provisionally, and to refuse a final acceptance of the road, as a whole, until all deficiencies should be supplied, and that sufficient subsidies might be withheld, or other guaranties required of the company, to secure absolute completion. The opinion is reported in 12 *Op. Atty-Generals*, at page 477, and is referred to as a part of this statement of facts. The President thenceforth acted upon this opinion of the attorney-general, and accepted each section when provisionally completed, leaving the question of the absolute completion of the road, as a whole, to be determined upon examination and report of commissioners to be specially appointed for that purpose.

APPOINTMENT OF A COMMISSION TO EXAMINE THE ROAD.

On September 25, 1868, the President, in pursuance of the opinion of the attorney-general, appointed a commission of civil engineers to examine the entire road, so far as then provisionally completed, and report upon it in accordance with instructions to be furnished by the Secretary of the Interior. Instructions were prepared, in which, after referring to the standard adopted by the President, a pamphlet copy of which was furnished, the Secretary of the Interior says,—"This standard had obvious reference, in the first instance, to a provisional completeness; but assurances were given by the companies, that the road, in structure, equipments, and every other particular, should be brought up with all practicable dispatch to the standard prescribed by congress. The rapid construction of this great national thoroughfare being deemed vitally important, it was not originally considered that in the early stages of the enterprise the standard of absolute completeness of each section should be exacted as a condition precedent to the payment of the subsidy. As the government has made such munificent advances, it becomes the duty of the Executive, in the present advanced stages of the work, to require that

all past omissions shall now be supplied, and that in lieu of temporary structures, those which are permanent and substantial shall be erected, and to secure from the companies a strict compliance with all the requirements in regard to the appurtenances of the road. It is believed that the time has now arrived for a thorough revision of the work. * *

"It is proper to state, however, that the department expects that you will make a thorough personal examination of the road, so far as it has been built. You will fully report in regard to its location, road-bed, cross-ties, track laying, ballasting, rolling stock, repair shops, station buildings, culverts, bridges, viaducts, turn-outs, and all other appurtenances, and what amount of expenditure will be required in order that the road, so far as built, may be rendered in these particulars equal to a full completed first-class railroad."

These commissioners, having completed their examination, made their report on May 14, 1869, in which they point out specifically many particulars in which the road, as constructed, fails to come up to the standard of a first-class road; and they report an estimate in detail, showing that, in their opinion, to supply such deficiencies on 551 miles of road eastward from Sacramento will require a further expenditure of $4,493,380. They say in their report, with reference to one deficiency, that "east of Truckee station, and especially up the Humboldt valley, the road for almost its entire length is wholly without ballast." On April 10, 1869, congress passed a joint resolution, by which the President was "authorized to appoint a board of eminent citizens, not exceeding five in number * * to examine and report upon the condition of, and what sum or sums, if any, will be required to complete, each of said roads [the Union and Central Pacific roads] for the entire length thereof to the said terminus as a first-class railroad, in compliance with the several acts relating to said roads." The President was thereby also "authorized and required to withhold from each of said

companies an amount of subsidy bonds, authorized to be issued by the United States under said acts to secure the full completion as a first-class road of all sections of such road upon which bonds have already been issued, or, in lieu of such bonds, he may receive as such security an equal amount of first mortgage bonds of such company." In default of giving such security, the President was authorized to direct the attorney-general to take such proceedings as might be necessary to protect the interests of the United States in such road, "and to insure the full completion thereof as a first-class road, as required by law and the statutes in that case made." (16 Stat. 56.)

APPOINTMENT OF THE BOARD OF EMINENT CITIZENS—ITS LABORS.

In pursuance of this joint resolution, the President appointed a board, which has since been known and styled, as in the resolution, "the board of eminent citizens." The connecting rail between the Central and Union Pacific railroads was laid on May 11, 1869, and soon thereafter regular through passenger trains from San Francisco to Omaha, carrying the United States mails, and through freight trains, were placed upon said roads, and such trains have run regularly between said points ever since. Afterwards, in the month of September, 1869, and subsequent to the provisional acceptance of the last section, on July 15, as hereinafter stated, the said "board of eminent citizens" commenced the examination of said Central Pacific Railroad, in pursuance of said joint resolution and the instructions given by the Secretary of the Interior. The board, among other things, was furnished with a copy of the said instructions given to the said previous board of engineers, and of their report, and directed to be governed thereby in their examinations; and were further instructed as follows: That you will "not only ascertain and report upon its condition, but will also state what sum or sums, if any, will be required to complete it, for the entire length thereof, as a first-class railroad, in

compliance with the several acts of congress relating thereto." After completing their examination, the board made its report on October 30, 1869, in which it gives a detailed estimate of the cost of work necessary to be done on the Central Pacific Railroad, from Sacramento eastward, in order to complete it in accordance with the acts of congress, amounting in the aggregate to $576,650.

PATENTS OF RAILROAD LANDS WITHHELD.

Pending the action of the said former "commission of civil engineers," on March 22, 1869, the Secretary of the Interior, to secure the proper completion of said railroad as required by law, issued an order to the commissioner of the general land office to withhold all patents for lands to the defendant until further orders; and soon thereafter, as further security, required the said defendant to deposit with the Secretary of the Treasury $4,000,000 of its first mortgage bonds, which order the defendant complied with in the months of May and June, 1869; and in connection with the deposit of said bonds, on June 28, 1869, executed and delivered to said secretary an instrument in writing, wherein it is among other things agreed, that "the four millions of dollars of first mortgage bonds of said company, which it has this day deposited with the government, * * are and may and shall be held by the government as security for the completion of the structure and equipment of the road of said company, according to the provisions of the statute, * * until the President of the United States, on a proper examination of the actual completed road and equipments, shall be satisfied that the same are so completed as a first-class railroad, according to law." And further, on failure to so complete the road, "the said bonds shall be held by the government, and shall be disposed of, and the proceeds thereof, if disposed of, applied to the proper completion of said road, its structure and equipments, as the government of the United States shall by law direct and

provide. And it is further agreed, that the lands granted as a portion of the subsidy of said company, for which patents have not been issued, shall also be held in like manner by the government of the United States, as security for the completion and equipment of the said railroad as aforesaid," etc. On July 15, 1869, the Secretary of the Interior transmitted to the President the report, dated May 15, 1869, of the commissioners appointed to examine and report upon a section of twenty and three tenths miles of the Central Pacific Railroad, this being the last section constructed by said defendant. In his letter, transmitting said report to the President for his action, the secretary says,—"I respectfully recommend the acceptance of the same, and that bonds be issued to the company thereon, in accordance with the agreement made with the company, which is to the effect that they deposit their first mortgage bonds with the Secretary of the Treasury to such amount as may be deemed necessary to secure the ultimate completion of the road, agreeably to the provisions of the act approved July 1, 1862." The agreement referred to is the agreement hereinbefore referred to, of date June 28, 1869,—which letter and report were returned to the Secretary of the Interior by the President, with an indorsement thereon as follows, to wit: "The recommendations of the Secretary of the Interior are approved, and the Secretary of the Treasury and himself are hereby directed to carry the same into effect. U. S. Grant." Recommendations in all respects similar to the last had been made by the Secretary of the Interior to the President, as to the reports made on several preceding sections of the road, and a similar approval was indorsed thereon by the President. Upon the same day, July 15, 1869, the Secretary of the Interior made a similar recommendation as to the section commissioners' reports upon the last sections of the Union Pacific Railroad, in which he recommends a similar provisional acceptance of the section: "*Provided, however*, that no bonds or patents shall in any

event be issued until such security shall be deposited with the Secretary of the Treasury necessary to secure the ultimate completion of the road, agreeably to the acts mentioned in my letter to you of the 27th of May last."

APPROVAL OF THE RECOMMENDATIONS OF THE SECRETARY OF THE INTERIOR BY THE PRESIDENT.

This recommendation was approved by the President, and the secretaries of the Treasury and Interior directed to carry the same into effect. These constitute the last provisional acceptances of sections as provisionally completed, and is the point of time at which the government now claims the roads to have been completed, for the purpose of entitling it to recover five per cent. of the net earnings of the roads.

Subsequently, in September, 1869, the Secretary of the Treasury denied an application of defendant to withdraw the $4,493,380 first mortgage and government bonds deposited, and withheld as security as aforesaid, and declined to surrender any security so held until the "board of eminent citizens should report." On November 3, 1869, the said board having in the meantime reported, and it appearing that the amount required to supply deficiencies and complete the work up to the required standard had been reduced since the last commission's report from $4,498,380 to $576,650, the Secretary of the Interior so modified his order of March 22, 1869, suspending the issue of patents to land, as to allow patents to one half the lands—every alternate odd section—to be issued, and soon after allowed the withdrawal of said first mortgage and other bonds, still retaining as security the other half of the lands.

DEFICIENCIES IN THE CONSTRUCTION OF THE ROAD.

On November 15, 1869, the Secretary of the Interior, in his annual report to the President, states the condition and circumstances of the said railroad, points out particulars wherein deficiencies in the construction still exist, reports

the amount found necessary to expend in completing the road up to the required standard, states the securities held for the purpose of insuring its completion, and adds,—"It will thus be perceived that the government has ample means to secure from the companies the faithful performance of their respective engagements." On March 27, 1871, the Secretary of the Interior refused an application by defendant to modify the order of November 3, 1869, continuing the suspension of the issuing of patents to one half the lands. He concludes his letter of denial as follows: "Before modifying the order suspending the issue of patents on one half of the lands, I desire a report showing the erroneous location to have been corrected, and that the deficiencies have been supplied. Whenever the company shall express a desire for a further examination of the road, commissioners will be appointed for that purpose."

In 1874 there was a bill pending in the senate, which had passed the house in response to demands of the people of several states interested, providing that the title to the lands granted for railroad purposes should at once be vested in the grantees, in order that the states might tax them. On June 9, 1874, the chairman of the senate Committee on Railroads, by direction of the committee, transmitted a copy of said bill to the Secretary of the Interior, requesting his views and suggestions with reference to the advisability of the proposed legislation. On June 17, 1874, the secretary responded, setting forth the proceedings of the various commissions and the reports of deficiencies; the reservation of one half these lands, by Secretary Cox's order, as security for completion of the road; that "the Executive had no official information that the deficiencies had been supplied;" that the subsidy bonds had been received in full; and that "this moiety of lands withheld is the only security of the government for the completion of the road as required by law." He then points out a provision in the bill, which, he says, "*ipso facto* repeals the said order of Mr. Cox," and suggests that

it be so changed as to make the mandatory order to the commissioner of the land office to issue patents "contingent on the Executive's being satisfied that all the deficiencies reported by the said 'eminent' citizens have been supplied, and that the roads are completed as required by law."

COMPLETION OF THE RAILROAD.

On August 2, 1874, the defendant addressed a communication to the Secretary of the Interior, in which it is stated that "the Central Pacific Railroad is now completed and in successful operation;" and it "requests that commissioners be appointed to examine the road with a view to its final acceptance by the United States government." In pursuance of said request, the President appointed commissioners; and, in a letter of instructions to the commissioners, dated September 21, 1874, among other things the Secretary of the Interior says,—"On the 30th of October, 1869, 'five eminent citizens,' who were appointed commissioners by the President under joint resolution of the 30th of April, 1869, reported certain deficiencies in the construction of the Central Pacific Railroad. The vice-president of the company that constructed the road applied, on the 2d ultimo, for its reëxamination, to determine whether it has been completed as required by law and the report of said commissioners. * * It will be your duty to examine said road with special reference to the deficiencies above referred to, and to report whether they have been substantially supplied. * * If they have been, and the road is completed substantially as required by the law and departmental instructions, you will ascertain as near as possible, and report the date of the completion. * * If it be not yet completed, you will state what, in your judgment, is necessary to such completion." Copies of the report of the preceding commissioners, and of the pamphlet showing the standard adopted by the department, were furnished the commissioners as a part of their instructions.

FINAL ACCEPTANCE OF THE ROAD—PATENTS TO THE RAILROAD LANDS ISSUED.

On November 2, 1874, the said commission reported that the defendant had completed its railroad in conformity to the requirements of the law, and that the date of such completion was October 1, 1874; and further reported, that, between the date of the report of the last preceding commission, October 30, 1869, and said October 1, 1874, said defendant had expended, in making the improvements specified, $5,121,037.23. On November 12, 1874, the secretary transmitted to the President the said report, together with a communication stating the action of the several commissions, and closing as follows: "Regarding the order of Mr. Secretary Cox, of November 3, 1869, as a conditional acceptance of said road, and finding that the conditions have since been amply and fully complied with, I respectfully recommend that the Secretary of the Interior be authorized to issue patents to the company for the lands inuring to it, and that said order withholding them be revoked." Upon which communication the President, on November 14, 1874, made and signed the following endorsement: "The within recommendations are hereby approved, the authority asked for conferred, and the order of 3d November, '69, is revoked." On November 18, 1874, in accordance with said order, the commissioner of the general land office was informed by the secretary of the revocation of said order, and directed to issue to defendant patents to the remaining lands due.

SATISFACTORY EVIDENCE THAT THE RAILROAD WAS NOT FINISHED UNTIL OCTOBER, 1874.

Aside from the action of the government and its officials, and the report of said several commissions, it satisfactorily appears, from the uncontradicted direct testimony of competent engineers, that the said Central Pacific Railroad was not, in fact, completed up to the standard of a first-class railroad till the first day of October, 1874; that five hun-

dred and fifty-one miles of said railroad was built during the first five months of the year 1869, in a very hasty and imperfect manner; that cuts and embankments had to be subsequently widened; temporary structures replaced or perfected; the line straightened in some instances, and several new tunnels constructed; that this part of the road was unballasted; that ballasting up to the standard of a first-class railroad is a gradual, progressive work, requiring time to settle the road-bed, and rains to compact and consolidate it; and that to ballast this road at that time up to the required standard, under the existing conditions, would have been wholly impracticable, and that no road can be called first class until well ballasted. It also satisfactorily appears, from uncontradicted testimony other than the acts of the government and the reports of its said commissioners, hereinbefore set forth, that the defendant, between October 30, 1869, and October 1, 1874, in fact, expended, in construction, bringing the road up to the standard of a first-class railroad, equipments, etc., $5,657,854. Of this sum $1,014,681.34 was for wharves and depot buildings at Oakland and San Francisco; $241,490.87 for improvements of depot grounds at Mission bay, San Francisco; and $105,906.60 for steamer *Thoroughfare* for ferrying cars across the bay. The remainder was expended in various improvements along the whole line, additional equipment, and other work necessary to make it in all respects a first-class road.

TWO QUESTIONS RAISED AND ARGUED.

Upon the facts of the case as found and stated, two questions have been raised and fully argued:

1. At what point of time was the road so fully completed as to make it obligatory upon the defendant to apply five per centum of the net earnings of the road to the payment of the bonds issued by the government, and the interest thereon?

2. What constitutes net earnings, within the meaning of the act?

Upon the first question, the government insists that the road was completed, and the obligation to set aside five per centum of the net earnings arose, on July 15, 1869, the date of the provisional acceptance of the last section, while the defendant maintains that the road was not completed as a whole until October 1, 1874, the date at which the whole road was accepted by the President as having been fully completed. The act of congress and the acceptance by the defendant constitute a contract between the parties, by the terms of which the defendant was required to build and complete such a road as is prescribed in the act,—a road "supplied with all necessary drains, culverts, viaducts, crossings, sidings, bridges, turn-outs, watering places, depots, equipments, furniture, and all other appurtenances of a first-class railroad;"—in other words, in all respects a first-class railroad, with all appropriate equipments and appurtenances. Such a road the defendant was bound to build and fully complete; and, until so built and completed as a whole, it was not entitled to be discharged from the obligations of the contract to complete the road, or to receive the full consideration which the government, on its part, undertook to give. So, also, in addition to constructing the road, another obligation was imposed on the defendant; for the act provides, that "*after the said road is completed*, until said bonds [bonds issued by the government] and interest are paid, at least five per centum of the net earnings of said road shall also be annually applied to the payment thereof." And this is the clause under which this action is brought. It is plain that the point of time at which the defendant becomes liable thus to apply five per cent. of the net earnings, is the point of time when he has fully completed the construction of the road as a whole, as an entirety, so that his contract is fully discharged, so far as the construction is concerned, and the defendant has thereby become entitled to receive all the

consideration therefor which the government undertook to give,—the point of time when it becomes entitled to all the lands granted and all the bonds and other subsidies promised. The clause is, "after said road is completed"—not a part, or section, but said road. When the road is completed for the purpose of casting the obligation upon defendant of applying five per cent. of the net earnings of the road to the payment of the government bonds and interest, it is also completed for the purpose of entitling it to have the road accepted, and of exonerating it from any further liabilities for construction, and for the purpose of entitling it to receive all the lands and other aid given by the government. The construction of the statute as to the time when the road is completed must be the same when it operates in favor of the defendant as when it operates in favor of the government. If the road was completed on July 15, 1869, so as to make it the duty of the defendant to apply five per centum of its net earnings to the payment of the subsidy bonds and interest, it was completed for the purpose of exonerating the defendant from expending further sums in the construction of the road, and for the purpose of entitling it to all the lands granted.

WHAT THE STATUTE AUTHORIZED THE PRESIDENT TO DETERMINE.

But the statute authorized the President, upon the report of commissioners appointed by him, to determine when the road should be deemed completed. Upon the completion of a section of forty, afterwards twenty, miles of road, the President of the United States was authorized by section 4 of the act "to appoint three commissioners to examine the same, and report to him in relation thereto; and if it shall appear to him that forty consecutive miles of said railroad and telegraph line have been completed," etc., "patents shall issue conveying the right and title to said lands to said company," etc. The commissioners were to report "*to him*," the President, for hisinformation; and if "*it shall*

appear to him" that the section is completed, then the defendant is to be entitled to the corresponding part of the subsidy. This provision clearly devolves the duty upon the President of determining when the road is completed. This was so held by Mr. Attorney-General Evarts, in an elaborate opinion given to the President for his guidance, in 1868, and I think correctly—12 *Op. At-G.* 477. And this determination of the President I think conclusive, at least upon the government. If so, it settles the question, for there can be no dispute as to what the action of the President, and of the Secretary of the Interior acting under his directions, actually was. The acceptance of sections from time to time as constructed was manifestly provisional, all the later ones being so expressly in terms upon their face. The whole action of the government is in harmony with this view, and utterly inconsistent with any other, as will be seen by a brief recapitulation of the facts, which speak for themselves. As early as September 25, 1868, the President appointed a commission of civil engineers to examine the entire road, so far as then provisionally accepted, and to report wherein it was not completed up to the standard required by the statute. This commission made a thorough examination, and on May 20, 1869, which is subsequent to laying the connecting rail uniting the two roads, made a minute and exhaustive report, showing that it would require $4,493,380 to bring the five hundred and fifty-one miles of the provisionally completed road examined by them up to the required standard. Without waiting for the action of the commission, the Secretary of the Interior, on March 22, 1869, for the purpose of withholding the lands as security for the completion of the road according to the statute, issued an order suspending the issue of all patents to lands due on completion of the road. At this time but a small portion of the lands belonging to the sections provisionally completed had been patented to the defendant, so that this order, in fact, withheld merely all the lands to which the defendant was entitled, provided the road was so far completed.

In April, also, congress authorized the appointment of another commission of eminent citizens to reëxamine the road and report deficiencies, and in express terms authorized the President, as further security for the completion of the road, to withhold subsidy bonds, or require the delivery of first mortgage bonds, or the return of subsidy bonds already received, sufficient to insure a full performance of the contract. Under this authority, so late as June 28, 1869, more than six weeks after the laying of the connecting rail, and after the favorable report of the section commissioners upon the last section constructed had been made, and only two weeks before its conditional acceptance by the secretary and approval by the President, the secretary required the defendant to deposit $4,000,000 of its first mortgage bonds, and to enter into an agreement that the bonds, together with the lands still unpatented, should be held as security for the completion of the road; and it was upon this deposit and agreement that the last section was conditionally accepted and the subsidy bonds issued, as expressly appears in terms in the recommendation of the secretary, which was approved by the President. In this condition matters stood till the committee of eminent citizens reëxamined the road, and reported, October 30, 1869, that it would require only $576,650 to complete the road according to the acts of congress. After this report, the Secretary of the Interior, deeming one half the lands ample security for the completion of the road, on November 3, 1869, modified the order of March 22, 1869, so as to permit the alternate sections of lands granted to be patented, retaining the other alternate sections as security, and soon after delivered to the defendant the said bonds deposited and withheld as security. Subsequently, on March 24, 1871, the Secretary of the Interior denied an application of the defendant to modify the order of November 3, 1869, whereby one half of the land was withheld as security for the completion of the work, on the ground that it did not yet appear that "the erroneous

locations have been corrected, and that the deficiencies have been supplied;" but he offered to appoint another commission whenever the defendant should desire it. Other applications for patents were denied. Again, as late as June 17, 1874, the Secretary of the Interior objected to any legislation by congress affecting his right to withhold these lands as security until the Executive should be "satisfied that all deficiencies reported by said 'eminent citizens' have been supplied, and that the roads are completed as required by law." Upon application of the defendant, another, and, as it proved to be, a final commission, was appointed September 21, 1874, to report upon the road, and, if completed, the date of such completion, which commission examined the road, and on November 2, 1874, reported the deficiencies supplied and the road completed, and that the date of its completion was October 1, 1874. Upon the recommendation of the Secretary of the Interior, the President, on November 14, 1874, approved this report and the secretary's recommendation, and thereupon vacated the order of November 3, 1869, suspending the issue of patents to one half the lands. This recapitulation of the facts shows that at the times mentioned, neither congress, nor the Secretary of the Interior, nor the President, regarded the road as completed; that the acceptance of sections was conditional and provisional only, for the purpose of issuing bonds, and enabling the companies to proceed with the work; that the government required a subsequent completion up to the standard required by the statute, and at all times retained in its possession, and under its control, ample security for the completion of the road; that it was not accepted as completed up to the standard required by the statute till November 14, 1874; and that the date of the completion, as fixed by the report of the commission accepted and approved by the President, is October 1, 1874. No argument can add force to this simple statement of the facts, or shake or qualify the conclusions resulting therefrom. If the road was com-

pleted on July 15, 1869, as now claimed by the government for the purposes of this action, then the government wrongfully withheld from the defendant all the lands granted to it (except the small portion before that date patented), from March 22, 1869, till November 3, 1869, together with $4,498,380 first mortgage and subsidy bonds deposited in May and June, and otherwise withheld; and further wrongfully withheld, thereby depriving the defendant of their use, one half, or every alternate section, of the lands due, till November 14, 1874, a period of more than five years after the completion of the road, as now claimed by the government. This is the necessary result, unless we adopt one rule of construction as to what constitutes a "completion of the road," when it is beneficial to the government, and another when the rights of the defendant are considered. It results, then, that if the President of the United States was authorized to determine the question as to when that road was completed, that determination was not made till November 14, 1874, and the time of the completion was October 1, 1874, at which time the liability of the defendant to be called upon to apply five per centum of the net earnings of the road commenced.

CONCLUSIVE EVIDENCE OF THE COMPLETION OF THE ROAD.

But if the decision of the President and action of the government are not conclusive upon the United States upon this point, it is still found as a fact that the said railroad was not, in point of fact, completed and equipped up to the standard of a first-class railroad, as required by the statute, till Oct. 1, 1874. Five hundred and fifty-one miles of railroad were constructed eastward from the Sierra Nevada mountains during the five months ending May 11, 1869, to a great extent through a desert, and during the greater part of the year, including all except the earlier part of the period of construction, a rainless region. The testimony of engineers shows, as also does the report of the engineers appointed by

the President to recommend a standard for the construction of the road, that to bring a railroad up to first-class, as a practical business proceeding, requires time after the mere laying of the rails; that a road of one or two thousand miles' length cannot, as a practical business transaction, be completely ballasted, equipped, and supplied with all the conveniences and accommodations of a first-class road, as a whole, in sections of twenty miles each, hastily constructed, so that each section, when so constructed, shall be so complete in construction, equipment, and appointment, as to fill its place as a part of the whole completed first-class road; that in such cases, ordinary practical business economy requires temporary structures to be gradually replaced as they become unfit for use, and ballasting to be a progressive work, affording time for the embankments to settle by use, and to be rendered compact by rains. As a practical business undertaking, it would manifestly be preposterous to expect that five hundred and fifty-one miles of road should be constructed up the Humboldt river, through a rainless desert, in the year 1869, and prior to the fifteenth day of July of that year, and be properly ballasted, and "supplied with all necessary drains, culverts, viaducts, crossings, sidings, bridges, turnouts, watering-places, depots, equipments, furniture, and all other appurtenances of a first-class railroad;" and no such feat was in fact performed. It is true, that this number of miles of road was constructed, so as to be capable of use,—and it was in fact in constant use from that time on;—but the law required something more than a road capable of use: it required, in all particulars, a first-class road, and the government was not required to accept anything short of a first-class railroad.

THE ROAD HURRIEDLY AND ENERGETICALLY CONSTRUCTED.

The construction of this road was pushed forward with unprecedented energy and haste for the purpose of getting the road open for traffic. When this object was accomplished,

the defendants, subsequently, acted upon sound, practical, economical business principles, and brought the road up to the standard required, by correcting locations, widening cuts and embankments, substituting permanent for temporary structures, ballasting, furnishing water stations, depots, sidings, equipments, etc., by degrees, in the same mode as the testimony shows is usual in the construction and equipment of other extensive first-class roads. The defendant was at that time under no legal obligation to make any greater haste in bringing the road up to the proper standard than was required by sound, practical, economical business principles. The law gave the defendant nearly seven years after July 15, 1869, within which to complete the road; and the government held in its own hands ample securities to insure its completion, and lost by the delay nothing to which it was entitled under the law or the contract; and the road is, doubtless, better for being gradually brought to the required standard. The road was finally completed and accepted nearly two years before the time required by the statute, and the government cannot complain that the completion was not in due time. It is earnestly urged on behalf of the government that the road was so far completed as to enable the defendant to make a profitable use of it, and since this is so, it ought to be held to be completed for the purpose of requiring the defendant to apply five per centum of the net earnings to the payment of the subsidy bonds and interest. Unfortunately for the argument and the government, the statute does not make the point of time at which the road is capable of use, the one at which the liability of the defendant, to apply one half of the net profits to the payment of the subsidy bonds, attaches,—but the completion of the road—such a road, and no other, as the statute required, and the defendant undertook to build—such a road as the government was bound to accept in full satisfaction of this part of the contract. And the defendant is entitled to stand on the terms of the contract. A very inferior road is capable

of use, and sometimes of a profitable use; and this road, although as good as could reasonably be expected under the circumstances at that stage of its progress towards completion, was certainly in many particulars an imperfect one on July 15, 1869, and for a considerable time thereafter. It was not then completed up to the standard required by the act of congress, and was not such a road as the government was bound to accept as completed. It was not, in fact, a road completed, in any just sense. It is manifest from the testimony, that the report of the "eminent citizens," of October 30, 1869, is extremely favorable to the defendant; yet this report required the sum of $576,650 to be expended to complete the road; and the government very properly insisted upon the expenditure being made before it would accept it as completed; and it retained in its hands ample means to insure a full performance of the contract on the part of the defendant. That this report was not unjust to the defendant is evident, from the circumstance that the defendant did, in fact, between the date of said report and October 1, 1874,—the date at which the road was accepted by the government as complete,—expend the sum of $5,657,-854.40, being more than four millions over the sum reported. It is by no means probable that this large sum was unnecessarily expended, and the testimony shows that it was in fact required to bring the road up to the standard of a really first-class road, as required by the statute. This is much more than the amount sought to be recovered by the government; and so far as the mere discharging of the contract to build the road is concerned, independent of other considerations, the defendant might well have afforded to pay the $1,800,000 now claimed as five per centum of net profits, if the government had accepted the road as completed on July 15, 1869, and relieved the defendant from the payment of these five millions of dollars and over to complete the road, and had delivered up the bonds and patented the lands withheld as security, to which it would then have been entitled. It was

manifestly not contemplated by the statute that the defendant should be called upon to apply five per centum of the net earnings of its road to the payment of the subsidy bonds, so long as it required any portion of its resources to be expended in the work of construction so as to complete the road up to the standard required by the act. The fact that the defendant, by an energetic prosecution of the work, so far constructed the road as to enable it to be used profitably several years before the time provided for its completion, and before its actual completion up to the required standard, has no bearing upon the question at issue. If it did, it would be found that the government was equally benefited, for it had the use of the road, for all the purposes contemplated by congress in passing the act, during the whole time it was available to the defendant, and as an entirety for more than six years earlier than was called for in the act of congress; and this direct pecuniary profit to the government, by reducing its expenditures in various ways, if the official reports of the railroad committees of congress are to be relied on, amounted to several millions of dollars per year—nearly or quite enough to pay the interest on the subsidy bonds. The government, therefore, has lost nothing by this early use of the incompleted road, but, on the contrary, has been the gainer of several millions a year during the whole period of such use. But the question here is not as to the comparative advantages derived by the parties from the building and use of this road; or whether the government did not make a more liberal grant than was necessary; or whether it might not have made a better bargain in other respects; or whether the defendant has, or has not, obtained a more profitable contract than it ought to have had. Whatever considerations of this character may be urged elsewhere, when the parties come into a court of justice to seek an adjudication of their rights, they stand upon their contract as it is; and the simple, dry question is, What is the contract, in fact and in law, and what are the rights of the parties under it? If this were a

contract between two natural persons—private citizens—it does not seem possible that there could be any question as to the construction to be given to the words "after said road is completed," in relation to the question under consideration; and that the construction would be completed, as a whole, up to the standard prescribed by the contract, so as to require an acceptance from the other party, and a discharge of the party building from any further liability for the purposes of construction. If this would be the natural and proper construction, as between private parties, a different one certainly cannot be claimed, or if claimed, admitted, because the government on the one side and a corporation on the other happen to be the parties to the transaction, and the contract chances to be found in a statute.

ELEMENTS OF AN ESTOPPEL WANTING.

It has been further urged, with some earnestness and apparent sincerity, that the defendant is estopped from denying the completion of the road on July 15, 1869, in consequence of presenting its statements of completion, and its claim to have the road accepted as completed; and has accepted so much of the consideration from the government as it was able to obtain. But many elements of an estoppel are wanting. The government did not rely upon this statement and accept the road. The statement was only filed in pursuance of the statute, as a basis to set in motion the commissions appointed under the act to examine and report to the President. It was the examination and report of the commission upon which the President was authorized to act, and upon which he did in fact act. In this case he not only acted, but refused to accept the road as completed in accordance with the statute until November 14, 1874, when he, for the first time, accepted the road as complete, and released the securities held to insure completion, which had, till that time, been withheld from the defendant, and which were fully ample to protect the government in case of the defendant's default.

CONCLUSIONS OF THE COURT.

My conclusion is, that the defendant's liability to apply five per centum of the net earnings of the road to the payment of the subsidy bonds issued by the government, and the interest thereon, did not accrue till October 1, 1874; and that the government is not entitled to recover any portion of the net earnings accrued prior to that date. The five per centum of the net earnings accrued since October 1, 1874, had not become due at the time this action was commenced. They are to "be annually applied" only. The demand in this case, made by the Secretary of the Treasury on the defendant, was on November 14, 1874, and the suit itself was commenced on April 20, 1875, the former within two and the latter within seven months after the completion of the road. As to the portion of the net earnings now due, therefore, this action is premature.

There is, also, a wide difference between the claims of the parties on the other point suggested, as to what constitutes "net earnings," within the meaning of the statute. When it becomes necessary to determine this question, it is quite probable that neither party will be found to be wholly right in its construction of the words "net earnings." But under the view I take it will be unnecessary to consider that point now.

Let there be a finding and judgment for the defendant.

LORENZO SAWYER.

October 15, 1877.

J. M. Coghlan, United States Attorney, for the plaintiff.

S. W. Sanderson and S. M. Wilson, for the defendant.

ACTS OF CONGRESS

RELATING TO

THE PACIFIC RAILROADS.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1878.

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PACIFIC RAILROAD ACTS.

ACT OF 1862.

AN ACT to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes, approved July 1, 1862. 12 Stat., 489.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Walter S. Burgess, William P. Blodgett, Benjamin H. Cheever, Charles Fosdick Fletcher, of Rhode Island; Augustus Brewster, Henry P. Haven, Cornelius S. Bushnell, Henry Hammond, of Connecticut; Isaac Sherman, Dean Richmond, Royal Phelps, William H. Ferry, Henry A. Paddock, Lewis J. Stancliff, Charles A. Secor, Samuel R. Campbell, Alfred E. Tilton, John Anderson, Azariah Boody, John S. Kennedy, H. Carver, Joseph Field, Benjamin F. Camp, Orville W. Childs, Alexander J. Bergen, Ben. Holliday, D. N. Barney, S. De Witt Bloodgood, William H. Grant, Thos. W. Olcott, Samuel B. Ruggles, James B. Wilson, of New York; Ephraim Marsh, Charles M. Harker, of New Jersey; John Edgar Thomson, Benjamin Haywood, Joseph H. Scranton, Joseph Harrison, George W. Cass, John H. Bryant, Daniel J. Morrell, Thomas M. Howe, William F. Johnson, Robert Finney, John A. Green, E. R. Myre, Charles F. Wells, jr., of Pennsylvania; Noah L. Wilson, Amasa Stone, William H. Clement, S. S. L'Hommedieu, John Brough, William Dennison, Jacob Blickinsderfer, of Ohio; William M. McPherson, R. W. Wells, Willard P. Hall, Armstrong Beatty, John Corby, of Missouri; S. J. Hensley, Peter Donahue, C. P. Huntington, T. D. Judah, James Bailey, James T. Ryan, Charles Hosmer, Charles Marsh, D. O. Mills, Samuel Bell, Louis McLane, George W. Mowe, Charles McLaughlin, Timothy Dame, John R. Robinson, of California; John Atchison and John D. Winters, of the territory of Nevada; John D. Campbell, R. N. Rice, Charles A. Trowbridge, and Ransom Gardner, Charles W. Penny, Charles T. Gorham, William McConnell, of Michigan; William F. Coolbaugh, Lucius H. Langworthy, Hugh T. Reid, Hoyt Sherman, Lyman Cook,

Samuel R. Curtis, Lewis A. Thomas, Platt Smith, of Iowa; William B. Ogden, Charles G. Hammond, Henry Farnum, Amos C. Babcock, W. Seldon Gale, Nehemiah Bushnell, and Lorenzo Bull, of Illinois; William H. Swift, Samuel T. Dana, John Bertram, Franklin S. Stevens, Edward R. Tinker, of Massachusetts; Franklin Gorin, Laban J. Bradford, and John T. Levis, of Kentucky; James Dunning, John M. Wood, Edwin Noyes, Joseph Eaton, of Maine; Henry H. Baxter, George W. Collamer, Henry Keyes, Thomas H. Canfield, of Vermont; William S. Ladd, A. M. Berry, Benjamin F. Harding, of Oregon; William Bunn, Jr., John Catlin, Levi Sterling, John Thompson, Elihu L. Phillips, Walter D. McIndoe, T. B. Stoddard, E. H. Brodhead, A. H. Virgin, of Wisconsin; Charles Paine, Thomas A. Morris, David C. Branham, Samuel Hanna, Jonas Votaw, Jesse L. Williams, Isaac C. Elston, of Indiana; Thomas Swan, Chauncey Brooks, Edward Wilkins, of Maryland; Francis R. E. Cornell, David Blakely, A. D. Seward, Henry A. Swift, Dwight Woodbury, John McKusick, John R. Jones, of Minnesota; Joseph A. Gilmore, Charles W. Woodman, of New Hampshire; W. H. Grimes, J. C. Stone, Chester Thomas, John Kerr, Werter R. Davis, Luther C. Challis, Josiah Miller, of Kansas; Gilbert C. Monell, and Augustus Kountz, T. M. Marquette, William H. Taylor, Alvin Saunders, of Nebraska; John Evans, of Colorado; together with five commissioners to be appointed by the Secretary of the Interior, and all persons who shall or may be associated with them, and their successors, are hereby created and erected into a body corporate and politic, in deed and in law, by the

Name and title.

name, style, and title of "The Union Pacific Railroad Company;" and by that name shall have perpetual succession, and shall be able to sue and to be sued, plead and be impleaded, defend and be defended, in all courts of law and equity within the United States, and may make and have a common seal; and the said corporation is hereby authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph,

Location, &c.

with the appurtenances, from a point on the one hundredth meridian of longitude west from Greenwich, between the south margin of the valley of the Republican river and the north margin of the valley of the Platte river, in the territory of Nebraska, to the western boundary of Nevada territory, upon the route and terms hereinafter provided, and is hereby vested with all the powers, privileges, and immunities necessary to carry into effect the purposes of this act

as herein set forth. The capital stock of said company shall consist of one hundred thousand shares of one thousand dollars each, which shall be subscribed for and held in not more than two hundred shares by any one person, and shall be transferable in such manner as the by-laws of said corporation shall provide. The persons hereinbefore named, together with those to be appointed by the Secretary of the Interior, are hereby constituted and appointed commissioners, and such body shall be called the Board of Commissioners of the Union Pacific Railroad and Telegraph Company, and twenty-five shall constitute a quorum for the transaction of business. The first meeting of said board shall be held at Chicago, at such time as the commissioners from Illinois herein named shall appoint, not more than three nor less than one month after the passage of this act, notice of which shall be given by them to the other commissioners by depositing a call thereof in the post-office at Chicago, post paid, to their address, at least forty days before said meeting, and also by publishing said notice in one daily newspaper in each of the cities of Chicago and St. Louis. Said board shall organize by the choice from its number of a president, secretary, and treasurer, and they shall require from said treasurer such bonds as may be deemed proper, and may from time to time increase the amount thereof as they may deem proper. It shall be the duty of said board of commissioners to open books, or cause books to be opened, at such times and in such principal cities in the United States as they or a quorum of them shall determine, to receive subscriptions to the capital stock of said corporation and a cash payment of ten per centum on all subscriptions, and to receipt therefor. So soon as two thousand shares shall be in good faith subscribed for, and ten dollars per share actually paid into the treasury of the company, the said president and secretary of said board of commissioners shall appoint a time and place for the first meeting of the subscribers to the stock of said company, and shall give notice thereof in at least one newspaper in each State in which subscription books have been opened, at least thirty days previous to the day of meeting; and such subscribers as shall attend the meeting so called, either in person or by proxy, shall then and there elect by ballot not less than thirteen directors for said corporation; and in such election each share of said capital shall entitle the owner thereof to one vote. The president and secretary of the board of commissioners shall act as inspectors of said election, and shall certify under their hands the names of the directors elected at said meeting; and the

Am't and number of shares of stock altered in sec. 1, act 1864.

Comm'rs, how appointed and to hold meeting.

Treasurer to give bonds, &c.

Books to be kept open. See sec. 2, 1864.

Comm'rs to call meeting of stockholders.

To elect directors. See sec. 13, act of 1864.

Books and property to be delivered to directors.

said commissioners, treasurer, and secretary shall then deliver over to said directors all the properties, subscription-books, and other books in their possession, and thereupon the duties of said commissioners and the officers previously appointed by them shall cease and determine forever, and thereafter the stockholders shall constitute said body politic and corporate. At the time of the first and each triennial election of directors by the stockholders, two additional directors shall be appointed by the President of the United States, who shall act with the body of directors, and to be denominated directors on the part of the government. Any vacancy happening in the government directors at any time may be filled by the President of the United States. The directors to be appointed by the President shall not be stockholders in the Union Pacific Railroad Company. The directors so chosen shall, as soon as may be after their election, elect from their own number a president and vice-president, and shall also elect a treasurer and secretary. No person shall be a director in said company unless he shall be a bona fide owner of at least five shares of stock in the said company, except the two directors to be appointed by the President, as aforesaid. Said company, at any regular meeting of the stockholders called for that purpose, shall have power to make by-laws, rules, and regulations, as they shall deem needful and proper, touching the disposition of the stock, property, estate, and effects of the company, not inconsistent herewith, the transfer of shares, the term of office, duties, and conduct of their officers and servants, and all matters whatsoever which may appertain to the concerns of said company; and the said board of directors shall have power to appoint such engineers, agents, and subordinates as may from time to time be necessary to carry into effect the object of this act, and to do all acts and things touching the location and construction of said road and telegraph. Said directors may require payment of subscriptions to the capital stock after due notice, at such times and in such proportions as they shall deem necessary to complete the railroad and telegraph within the time in this act prescribed. Said president, vice-president, and directors shall hold their office for three years, and until their successors are duly elected and qualified, or for such less time as the by-laws of the corporation may prescribe; and a majority of said directors shall constitute a quorum for the transaction of business. The secretary and treasurer shall give such bonds, with such security, as the said board shall from time to time require, and shall hold their offices at the will and pleasure of the direct-

Two directors to be appointed by the President of the U. S.

By act of 1864 altered to five. See sec. 13, 1864.

Amended by sec. 1, 1864.

Company to make by-laws.

Directors to appoint agents, &c.

Directors to require payment of subscriptions. Sec. 2, act of 1864.

Officers to hold for three years altered by sec. 13, 1864.

ors. Annual meetings of the stockholders of the said corporation, for the choice of officers (when they are to be chosen) and for the transaction of annual business, shall be holden at such time and place and upon such notice as may be prescribed in the by-laws.

Right of way granted.

SEC. 2. *And be it further enacted*, That the right of way through the public lands be, and the same is hereby, granted to said company for the construction of said railroad and telegraph line; and the right, power, and authority is hereby given to said company to take from the public lands adjacent to the line of said road, earth, stone, timber, and other materials for the construction thereof; said right of way is granted to said railroad to the extent of two hundred feet in width on each side of said railroad where it may pass over the public lands, including all necessary grounds for stations, buildings, workshops, and depots, machine shops, switches, side tracks, turn-tables, and water-stations. The United States shall extinguish, as rapidly as may be, the Indian titles to all lands falling under the operation of this act, and required for the said right of way and grants hereinafter made.

See sec. 3, 1864.

U. S. to extinguish Indian titles. Sec. 18, 1864.

Land grants—alternate sections.

SEC. 3. *And be it further enacted*, That there be, and is hereby, granted to the said company, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores thereon, every alternate section of public land, designated by odd numbers, to the amount of *five* alternate sections per mile on each side of said railroad, on the line thereof, and within the limits of *ten* miles on each side of said road, not sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached, at the time the line of said road is definitely fixed: *Provided*, That all *mineral lands* shall be excepted from the operation of this act; but where the same shall contain timber, the timber thereon is hereby granted to said company. And all such lands, so granted by this section, which shall not be sold or disposed of by said company within three years after the entire road shall have been completed, shall be subject to settlement and pre-emption, like other lands, at a price not exceeding one dollar and twenty-five cents per acre, to be paid to said company.

Chang'd to TEN by sec. 4, 1864.

Changed to TWENTY. Sec. 4, 1864.

Minerals and timber. Sec. 4, 1864.

On completion of forty miles [changed to TWENTY by sec. 6, 1864] U. S. com'rs to examine.

SEC. 4. *And be it further enacted*, That whenever said company shall have completed forty consecutive miles of any portion of said railroad and telegraph line, ready for the service contemplated by this act, and supplied with all neces-

sary drains, culverts, viaducts, crossings, sidings, bridges, turnouts, watering places, depots, equipments, furniture, and all other appurtenances of a first class railroad, the rails and all the other iron used in the construction and equipment of said road to be American manufacture of the best quality, the President of the United States shall appoint three commissioners to examine the same and report to him in relation thereto; and if it shall appear to him that forty consecutive miles of said railroad and telegraph line have been completed and equipped in all respects as required by this act, then, upon certificate of said commissioners to that effect, patents shall issue conveying the right and title to said lands to said company, on each side of the road as far as the same is completed, to the amount aforesaid; and patents shall in like manner issue as each forty miles of said railroad and telegraph line are completed, upon certificate of said commissioners. Any vacancies occurring in said board of commissioners, by death, resignation, or otherwise, shall be filled by the President of the United States: *Provided, however*, That no such commissioners shall be appointed by the President of the United States unless there shall be presented a statement, verified on oath by the president of said company, that such forty miles have been completed in the manner required by this act, and setting forth with certainty the points where such forty miles begin and where the same end; which oath shall be taken before a judge of a court of record.

And patents of land to issue.

Vacancies in comm'rs. See sec. 2, act of 1864.

Government bonds. See sec. 8, act 1864, also sec. 10.

SEC. 5. *And be it further enacted*, That for the purposes herein mentioned, the Secretary of the Treasury shall, upon the certificate in writing of said commissioners of the completion and equipment of forty consecutive miles of said railroad and telegraph, in accordance with the provisions of this act, issue to said company bonds of the United States of one thousand dollars each, payable in thirty years after date, bearing six per centum per annum interest (said interest payable semi-annually), which interest may be paid in United States treasury notes, or any other money or currency which the United States have or shall declare lawful money and a legal tender, to the amount of sixteen of said bonds per mile for such section of forty miles; and to secure the repayment to the United States, as hereinafter provided, of the amount of said bonds so issued and delivered to said company, together with all interest thereon which shall have been paid by the United States, the issue of said bonds and delivery to the company shall *ipso facto* constitute a first mortgage on the whole line

Now 20 miles. Sec. 10, 1864.

See sec. 11 of this act, for $32,000 and $48,000 per mile.

Lien of U. S. bonds made subordinate. See sec. 10, act of 1864.

of the railroad and telegraph, together with the rolling stock, fixtures, and property of every kind and description, and in consideration of which said bonds may be issued; and on the refusal or failure of said company to redeem said bonds, or any part of them, when required so to do by the Secretary of the Treasury, in accordance with the provisions of this act, the said road, with all the rights, functions, immunities, and appurtenances thereunto belonging, and also all lands granted to the said company by the United States, which at the time of said default shall remain in the ownership of the said company, may be taken possession of by the Secretary of the Treasury, for the use and benefit of the United States: *Provided*, This section shall not apply to that part of any road now constructed.

See sec. 10, act 1864.

Modified. See sec. 5, act of 1864.

SEC. 6. *And be it further enacted*, That the grants aforesaid are made upon condition that said company shall pay said bonds at maturity, and shall keep said railroad and telegraph line in repair and use, and shall at all times transmit dispatches over said telegraph line, and transport mails, troops, munitions of war, supplies, and public stores upon said railroad for the government, whenever required to do so by any department thereof, and that the government shall at all times have the preference in the use of the same for all the purposes aforesaid (at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service); and all compensation for services rendered for the government shall be applied to the payment of said bonds and interest until the whole amount is fully paid. Said company may also pay the United States, wholly or in part, in the same or other bonds, treasury notes, or other evidences of debt against the United States, to be allowed at par; and after said road is completed, until said bonds and interest are paid, at least five per centum of the net earnings of said road shall also be annually applied to the payment thereof.

Bonds, when and how paid.

Government transportation — half to be paid in cash. See sec. 5, act of 1864.

SEC. 7. *And be it further enacted*, That said company shall file their assent to this act, under the seal of said company, in the Department of the Interior, within one year after the passage of this act, and shall complete said railroad and telegraph from the point of beginning, as herein provided, to the western boundary of Nevada territory, before the first day of July, one thousand eight hundred and seventy-four: *Provided*, That within two years after the passage of this act, said company shall designate the general route of said road, as near as may be, and shall file a map of the same in the Department of the Interior, where-

Assent of company to be filed, &c.

Time of completion extended, see sec. 6, 1864.

See sec. 4, act 1864. Map, &c., designating route to be filed, &c.

upon the Secretary of the Interior shall cause the lands within fifteen miles of said designated route or routes to be withdrawn from pre-emption, private entry, and sale; and when any portion of said route shall be finally located, the Secretary of the Interior shall cause the said lands hereinbefore granted to be surveyed and set off as fast as may be necessary for the purposes herein named: *Provided*, That, in fixing the point of connection of the main trunk with the eastern connections, it shall be fixed at the most practicable point for the construction of the Iowa and Missouri branches, as hereinafter provided.

Lands designated, &c.

From 100th meridian to Nevada.

SEC. 8. *And be it further enacted*, That the line of said railroad and telegraph shall commence at a point on the one hundredth meridian of longitude west from Greenwich, between the south margin of the valley of the Republican river and the north margin of the valley of the Platte river, in the territory of Nebraska, at a point to be fixed by the President of the United States, after actual surveys; thence running westerly upon the most direct, central, and practicable route through the territories of the United States, to the western boundary of the territory of Nevada, there to meet and connect with the line of the Central Pacific Railroad Company of California.

See sec. 10 of this act.

Kansas Co. to construct road, &c.

SEC. 9. *And be it further enacted*, That the Leavenworth, Pawnee and Western Railroad Company of Kansas are hereby authorized to construct a railroad and telegraph line from the Missouri River to the mouth of the Kansas river, on the south side thereof, so as to connect with the Pacific Railroad of Missouri, to the aforesaid point on the one hundredth meridian of longitude west from Greenwich, as herein provided, upon the same terms and conditions in all respects as are provided in this act for the construction of the railroad and telegraph lines first mentioned, and to meet and connect with the same at the meridian of longitude aforesaid; and in case the general route or line of road from the Missouri River to the Rocky Mountains should be so located as to require a departure northwardly from the proposed line of said Kansas railroad before it reaches the meridian of longitude aforesaid, the location of said Kansas road shall be made so as to conform thereto; and said railroad through Kansas shall so be located between the mouth of the Kansas river, as aforesaid, and the aforesaid point on the one hundredth meridian of longitude, that the several railroads from Missouri and Iowa, herein authorized to connect with the same, can make connection within the limits prescribed

in this act, provided the same can be done without deviating from the general direction of the whole line to the Pacific coast. The route in Kansas west of the meridian of Fort Riley to the aforesaid point on the one hundredth meridian of longitude to be subject to the approval of the President of the United States, and to be determined by him on actual survey. And said Kansas company may proceed to build said railroad to the aforesaid point on the one hundredth meridian of longitude west from Greenwich, in the territory of Nebraska. The Central Pacific Railroad Company of California, a corporation existing under the laws of the state of California, are hereby authorized to construct a rail road and telegraph line from the Pacific coast, at or near San Francisco, or the navigable waters of the Sacramento river, to the eastern boundary of California, upon the same terms and conditions, in all respects, as are contained in this act for the construction of said railroad and telegraph line first mentioned, and to meet and connect with the first mentioned railroad and telegraph line on the eastern boundary of California. Each of said companies shall file their acceptance of the conditions of this act in the Department of the Interior within six months after the passage of this act.

Central Pacific R. R. Co., of California, authorized to construct road on same terms and conditions.

SEC. 10. *And be it further enacted*, That the said company chartered by the state of Kansas shall complete one hundred miles of their said road, commencing at the mouth of the Kansas river, as aforesaid, within two years after filing their assent to the conditions of this act, as herein provided, and one hundred miles per year thereafter until the whole is completed; and the said Central Pacific Railroad Company of California shall complete fifty miles of their said road within two years after filing their assent to the provisions of this act, as herein provided, and fifty miles per year thereafter until the whole is completed; and after completing their roads, respectively, said companies, or either of them, may unite upon equal terms with the first named company in constructing so much of said railroad and telegraph line and branch railroads and telegraph lines, in this act hereinafter mentioned, through the territories from the state of California to the Missouri river, as shall then remain to be constructed, on the same terms and conditions as provided in this act in relation to the said Union Pacific Railroad Company. And the Hannibal and Saint Joseph Railroad, the Pacific Railroad Company of Missouri, and the first named company, or either of them, on filing their assent to this act as aforesaid, may unite upon equal terms,

Time of doing work, &c.

Changed to 25 miles. See sec. 5, act 1864.

Companies may unite in building on equal terms. Sec. 15, 1864, also sec. 16 of this act.

under this act, with the said Kansas company, in construct ing said railroad and telegraph to said meridian of longitude, with the consent of the said State of Kansas; and in case said first named company shall complete their line to the eastern boundary of California before it is completed across said State by the Central Pacific Railroad Company of California, said first named company is hereby authorized to continue in constructing the same through California, with the consent of said State, upon the terms mentioned in this act, until said roads shall meet and connect, and the whole line of said railroad and telegraph is completed; and

Central Pacific R. R. Co. may continue, &c., to meet other road.

the Central Pacific Railroad Company of California, after completing its road across said State, is authorized to continue the construction of said railroad and telegraph through the territories of the United States* to the Missouri River, including the branch roads specified in this act, upon the routes hereinbefore and hereinafter indicated, on the terms and conditions provided in this act in relation to the said Union Pacific Railroad Company, until said roads shall meet and connect, and the whole line of said railroad and branches and telegraph is completed.

Authority confirmed. See sec. 16, act of 1864, last clause. Also sec. 2, 1866.

Subsidy bonds; treble over the Rocky and Sierra Nevada Mountains.

SEC. 11. *And be it further enacted*, That for three hundred miles of said road most mountainous and difficult of construction, to wit, one hundred and fifty miles westwardly from the eastern base of the Rocky Mountains, and one hundred and fifty miles eastwardly from the western base of the Sierra Nevada Mountains, said points to be fixed by the President of the United States, the bonds to be issued to aid in the construction thereof shall be treble the number per mile hereinbefore provided, and the same shall be issued, and the lands herein granted be set apart, upon the construction of every twenty miles thereof upon the certificate of the commissioners as aforesaid that twenty consecutive miles of the same are completed; and between the sections last named of one hundred and fifty miles each, the bonds to be issued to aid in the construction thereof shall be double the number per mile first mentioned, and the same shall be issued, and the lands herein granted be set apart, upon the construction of every twenty miles thereof upon the certificate of the commissioners as aforesaid that twenty consecutive miles of the same are completed: *Provided*, That no more than fifty thousand of said bonds shall be issued under this act to aid in constructing the main line of said railroad and telegraph.

Subsidy bonds, double between mountains.

* See section 6, act July 2, 1864. The words "and States intervening" inserted.

SEC. 12. *And be it further enacted*, That whenever the route of said railroad shall cross the boundary of any State or territory, or said meridian of longitude, the two companies meeting or uniting there shall agree upon its location at that point, with reference to the most direct and practicable through route; and in case of difference between them as to said location, the President of the United States shall determine the said location,—the companies named in each State and territory to locate the road across the same between the points so agreed upon, except as herein provided. The track upon the entire line of railroad and branches shall be of uniform width, to be determined by the President of the United States, so that, when completed, cars can be run from the Missouri River to the Pacific coast;* the grades and curves shall not exceed the maximum grades and curves of the Baltimore and Ohio Railroad; the whole line of said railroad and branches and telegraph shall be operated and used for all purposes of communication, travel, and transportation, so far as the public and government are concerned, as one connected continuous line; and the companies herein named in Missouri, Kansas, and California, filing their assent to the provisions of this act, shall receive and transport all iron rails, chairs, spikes, ties, timber, and all materials required for constructing and finishing said first-mentioned line between the aforesaid point on the one hundredth meridian of longitude and western boundary of Nevada territory, whenever the same is required by said first-named company, at cost, over that portion of the roads of said companies constructed under the provisions of this act.

Location at State lines and 100 meridian.

Track to be of uniform width, &c.

To be used as continuous line, &c.

SEC. 13. *And be it further enacted*, That the Hannibal and Saint Joseph Railroad Company of Missouri may extend its roads from Saint Joseph *via* Atchison, to connect and unite with the road through Kansas, upon filing its assent to the provisions of this act, upon the same terms and conditions in all respects, for one hundred miles in length next to the Missouri River, as are provided in this act for the construction of the railroad and telegraph line first mentioned, and may for this purpose use any railroad charter which has been or may be granted by the legislature of Kansas: *Provided*, that if actual survey shall render it desirable, the

H. & St. J. road may be extended, &c.

* The gauge was subsequently fixed by the following act of Congress:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the gauge of the Pacific Railroad and its branches, throughout their whole extent, from the Pacific coast to the Missouri river, shall be, and hereby is, established at four feet eight and one-half inches.

Approved March 3, 1863.

said company may construct their road, with the consent of the Kansas legislature, on the most direct and practicable route west from Saint Joseph, Missouri, so as to connect and unite with the road leading from the western boundary of Iowa at any point east of the one hundredth meridian of west longitude, or with the main trunk road at said point; but in no event shall lands or bonds be given to said company, as herein directed, to aid in the construction of their said road for a greater distance than one hundred miles. And the Leavenworth, Pawnee, and Western Railroad Company of Kansas may construct their road from Leavenworth to unite with the road through Kansas.

Iowa road from western boundary of Iowa.

SEC. 14. *And be it further enacted*, That the said Union Pacific Railroad Company is hereby authorized and required to construct a single line of railroad and telegraph from a point on the western boundary of the state of Iowa, to be fixed by the President of the United States, upon the most direct and practicable route, to be subject to his approval, so as to form a connection with the lines of said company at some point on the one hundredth meridian of longitude aforesaid, from the point of commencement on the western boundary of the State of Iowa, upon the same terms and conditions, in all respects, as are contained in this act for the construction of the said railroad and telegraph first mentioned; and the said Union Pacific Railroad Company shall complete one hundred miles of the road and telegraph in this section provided for in two years after filing their assent to the conditions of this act, as by the terms of this act required, and at the rate of one hundred miles per year thereafter, until the whole is completed: *Provided*, That a failure upon the part of said company to make said connection in the time aforesaid, and to perform the obligations imposed on said company by this section, and to operate said road in the same manner as the main line shall be operated, shall forfeit to the government of the United States all the rights, privileges, and franchises granted to and conferred upon said company by this act. And whenever there shall be a line of railroad completed through Minnesota or Iowa to Sioux City, then the said Pacific Railroad Company is hereby authorized and required to construct a railroad and telegraph from said Sioux City upon the most direct and practicable route to a point on, and so as to connect with, the branch railroad and telegraph in this section hereinbefore mentioned, or with the said Union Pacific Railroad, said point of junction to be fixed by the President of the United States, not further west than the one hundredth

U. P. R. R. Co. required to construct Sioux City road. Sec. 16, act of 1864.

meridian of longitude aforesaid, and on the same terms and conditions as provided in this act for the construction of the Union Pacific Railroad as aforesaid, and to complete the same at the rate of one hundred miles per year; and should said company fail to comply with the requirements of this act in relation to the said Sioux City railroad and telegraph, the said company shall suffer the same forfeitures prescribed in relation to the Iowa branch railroad and telegraph hereinbefore mentioned.

Other companies may connect, &c.

SEC. 15. *And be it further enacted*, That any other railroad company now incorporated, or hereafter to be incorporated, shall have the right to connect their road with the road and branches provided for by this act, at such places and upon such just and equitable terms as the President of the United States may prescribe. Wherever the word company is used in this act, it shall be construed to embrace the words their associates, successors, and assigns, the same as if the words had been properly added thereto.

Word company explained.

Companies authorized to consolidate. See sec. 16, act of 1864. Also sec. 10 of this act.

SEC 16. *And be it further enacted*, That at any time after the passage of this act all of the railroad companies named herein, and assenting hereto, or any two or more of them, are authorized to form themselves into one consolidated company; notice of such consolidation, in writing, shall be filed in the Department of the Interior, and such consolidated company shall thereafter proceed to construct said railroad and branches and telegraph line, upon the terms and conditions provided in this act.

Congress may compel speedy completion of road.

SEC. 17. *And be it further enacted*, That in case said company or companies shall fail to comply with the terms and conditions of this act, by not completing said road and telegraph and branches within a reasonable time, or by not keeping the same in repair and use, but shall permit the same for an unreasonable time to remain unfinished or out of repair and unfit for use, congress may pass any act to insure the speedy completion of said road and branches, or put the same in repair and use, and may direct the income of said railroad and telegraph line to be thereafter devoted to the use of the United States, to repay all such expenditures caused by the default and neglect of such company or companies: *Provided*, That if said roads are not completed, so as to form a continuous line of railroad, ready for use, from the Missouri River to the navigable waters of the Sacramento river, in California, by the first day of July, eighteen hundred and seventy-six, the whole of all of said railroads before mentioned, and to be constructed under the provisions of this act, together with

Main line to be finished in 1876. See secs. 5 and 7, act of 1864.

all their furniture, fixtures, rolling stock, machine shops, lands, tenements, and hereditaments, and property of every kind and character, shall be forfeited to and be taken possession of by the United States: *Provided*, That of the bonds of the United States in this act provided to be delivered for any and all parts of the roads to be constructed east of the one hundredth meridian of west longitude from Greenwich, and for any part of the road west of the west foot of the Sierra Nevada mountains, there shall be reserved of each part and instalment twenty-five per centum, to be and remain in the United States treasury, undelivered, until said road, and all parts thereof provided for in this act, are entirely completed; and of all the bonds provided to be delivered for the said road, between the two points aforesaid, there shall be reserved out of each instalment fifteen per centum, to be and remain in the Treasury until the whole of the road provided for in this act is fully completed; and if the said road, or any part thereof, shall fail of completion at the time limited therefor in this act, then and in that case the said part of said bonds so reserved shall be forfeited to the United States.

Repealed. See sec. 7, act of 1864.

Under certain circumstances congress may reduce rates of fare.

SEC. 18. *And be it further enacted*, That whenever it appears that the net earnings of the entire road and telegraph, including the amount allowed for services rendered for the United States, after deducting all expenditures—including repairs, and the furnishing, running, and managing of said road—shall exceed ten per centum upon its cost (exclusive of the five per centum to be paid to the United States), congress may reduce the rates of fare thereon, if unreasonable in amount, and may fix and establish the same by law. And the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, congress may at any time—having due regard for the rights of said companies named herein—add to, alter, amend, or repeal this act.

May arrange with telegraph companies now existing.

SEC. 19. *And be it further enacted*, That the several railroad companies herein named are authorized to enter into an arrangement with the Pacific Telegraph Company, the Overland Telegraph Company, and the California State Telegraph Company, so that the present line of telegraph between the Missouri river and San Francisco may be moved upon or along the line of said railroad and branches

as fast as said roads and branches are built; and if said arrangement be entered into, and the transfer of said telegraph line be made in accordance therewith to the line of said railroad and branches, such transfer shall, for all purposes of this act, be held and considered a fulfillment, on the part of said railroad companies, of the provisions of this act in regard to the construction of said line of telegraph. And in case of disagreement, said telegraph companies are authorized to remove their line of teleg aph along and upon the line of railroad herein contemplated, without prejudice to the rights of said railroad companies named herein. See sec. 15, act of 1864.

SEC. 20. *And be it further enacted*, That the corporation hereby created and the roads connected therewith under the provisions of this act, shall make to the Secretary of the Treasury an annual report, wherein shall be set forth: Companies to make annual report.

First. The names of the stockholders and their places of residence, so far as the same can be ascertained.

Second. The names and residences of the directors, and all other officers of the company.

Third. The amount of stock subscribed, and the amount thereof actually paid in.

Fourth. A description of the lines of road surveyed, of the lines thereof fixed upon for the construction of the road, and the cost of such survey.

Fifth. The amount received from passengers on the road.

Sixth. The amount received for freight thereon.

Seventh. A statement of the expense of said road and its fixtures.

Eighth. A statement of the indebtedness of said company, setting forth the various kinds thereof; which report shall be sworn to by the president of the said company, and shall be presented to the Secretary of the Treasury on or before the first day of July in each year.*

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*AN ACT relating to filing reports of railroad companies.—[15 Stat. 79.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the reports required to be made to the Secretary of the Treasury on or before the first day of July of each year, by the corporations created by or entitled to subsidies under the provisions of an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific ocean, and to secure to the government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred and sixty-two, and the acts supplemental to and amendatory thereof, shall hereafter be made to the Secretary of the Interior, on or before the first day of October of each year. Said reports shall furnish full and specific information upon the several points mentioned in the twentieth section of the said act of eighteen hundred and sixty-two, and shall be verified as therein prescribed, and, on failure to make the same as herein

12 Stat., 538. AN ACT to amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific ocean, and to secure to the government the use of the same for postal, military, and other purposes," approved July 2 [1], 1862.

First meeting of commissioners on Pacific Railroad and telegraph, to be held in Chicago.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first meeting of the commissioners named in the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military, and other purposes," approved July second [first], eighteen hundred and sixty-two, and of the five commissioners directed by said act to be appointed by the Secretary of the Interior, shall be held at Bryan hall, in the city of Chicago, in the State of Illinois, on the first Tuesday of September next, at twelve o'clock at noon. A notice of said meeting, to be signed by at least ten of the commissioners named in said act, shall be published at least once a week during the six successive weeks commencing on the twentieth of July, one thousand eight hundred and sixty-two, in one daily newspaper in each of the cities of Boston, New York, Philadelphia, Cincinnati, Chicago, and St. Louis, and no other notice of said meeting shall be requisite.

Notice.

Approved July 12, 1862.

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required, the issue of bonds or patents to the company in default shall be suspended until the requirements of this act shall be complied with by such company. And the reports hitherto made to the Secretary of the Treasury, under the said act of July first, eighteen hundred and sixty-two, shall be transferred and delivered by him to the Secretary of the Interior to be filed by him.

* * * * * * *

SEC. 3. *And be it further enacted*, That the reports required from the commissioners appointed to examine and report in relation to the road of any of the corporations whereto reference is made in this act, shall be addressed to and filed in the Department of the Interior; and all such reports heretofore made shall be transferred to and filed in said Department of the Interior; and so much of any and all acts as requires any reports from such companies, or any officers thereof, to be made to the Secretary of the Treasury, is hereby repealed.

SEC. 4. *And be it further enacted*, That, in addition to the eight subjects referred to in section twenty of the act of July, eighteen hundred and sixty-two, to be reported upon, there shall also be furnished annually to the Secretary of the Interior all reports of engineers, superintendents, or other officers who make annual reports to any of said railroad companies.

Approved June 25, 1868.

AMENDMENT OF JULY 2, 1864.

AN ACT to amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific ocean, and to secure to the government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred and sixty-two. 13 Stat., 356.

Shares of U. P. R. R. Co. changed from $1,000 to $100.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the capital stock of the company entitled the Union Pacific Railroad Company, authorized by the act of which this act is amendatory, shall be in shares of one hundred dollars, instead of one thousand dollars, each; that the number of shares shall be one million, instead of one hundred thousand; and that the number of shares which any person shall hold to entitle him to serve as a director in said company (except the five directors to be appointed by the government) shall be fifty shares, instead of five shares; and that every subscriber to said capital stock for each share of one thousand dollars, heretofore subscribed, shall be entitled to a certificate for ten shares of one hundred dollars each; and that the following words in section first of said act, "which shall be subscribed for and held in not more than two hundred shares by any one person," be, and the same are hereby, repealed.

Books to be kept open in several cities. 1860, sec. 2.

SEC. 2. *And be it further enacted*, That the Union Pacific Railroad Company shall cause books to be kept open to receive subscriptions to the capital stock of said company (until the entire capital of one hundred millions of dollars shall be subscribed) at the general office of said company in the city of New York, and in each of the cities of Boston, Philadelphia, Baltimore, Chicago, Cincinnati, and St. Louis, at such places as may be designated by the President of the United States, and in such other localities as may be directed by him.

Per cent. to be paid.

No subscription for said stock shall be deemed valid unless the subscriber therefor shall, at the time of subscribing, pay or remit to the treasurer of the company an amount per share subscribed by him equal to the amount per share previously paid by the then existing stockholders.

Assessments of stockholders.

The said company shall make assessments upon its stockholders of not less than five dollars per share, and at intervals of not exceeding six months from and after the passage of this act, until the par value of all shares subscribed shall be fully paid; and money only shall be receivable for any such assessment, or as equivalents for any portion of the capital stock hereinbefore authorized.

How paid.

The

Amount of capital.

capital stock of said company shall not be increased beyond the actual cost of said road. And the stock of the company

Stock personal property.

shall be deemed personal property, and shall be transferable on the books of the company, at the general office of said company in the city of New York, or at such other transfer office as the company may establish.

Additional right of way granted. See sec. 2, 1862.

SEC. 3. *And be it further enacted*, That the Union Pacific Railroad Company, and all other companies provided for in this act and the act to which this is an amendment, be, and hereby are, empowered to enter upon, purchase, take, and hold any lands or premises that may be necessary and proper for the construction and working of said road, not exceeding in width one hundred feet on each side of its centre line, unless a greater width be required for the purpose of excavation or embankment; and also any land or premises that may be necessary and proper for turnouts, standing places for cars, depots, station-houses, or any other structures required in the construction and operating of said road. And each of said companies shall have the right to cut and remove trees or other materials that might by falling encumber its road-bed, though standing or being

Assessment of damages.

more than one hundred feet therefrom. And in case the owner or claimant of such lands or premises and such company cannot agree as to the damages, the amount shall be determined by the appraisal of three disinterested commissioners, who may be appointed upon application by any party to any judge of a court of record in any of the territories in which the land or premises to be taken lie; and said commissioners, in their assessments of damages, shall appraise such premises at what would have been the value thereof if the road had not been built; and upon return into court

Payment and title.

of such appraisement, and upon the payment to the clerk thereof of the amount so awarded by the commissioners for the use and benefit of the owner thereof, said premises shall be deemed to be taken by said company, which shall thereby acquire full title to the same for the purposes aforesaid.

Appeal.

And either party feeling aggrieved by said assessment may, within thirty days, file an appeal therefrom, and demand a jury of twelve men to estimate the damage sustained; but such appeal shall not interfere with the rights of said company to enter upon the premises taken, or to do any act

Bonds on appeal.

necessary in the construction of its road. And said party appealing shall give bonds with sufficient surety or sureties for the payment of any costs that may arise upon such

Costs of appea

appeal. And in case the party appealing does not obtain a more favorable verdict, such party shall pay the whole cost

incurred by the appellee as well as its own. And the payment into court, for the use of the owner or claimant, of a sum equal to that finally awarded shall be held to vest in said company the title of said land, and the right to use and occupy the same for the construction, maintaining, and operating of the road of said company. And in case any of the lands to be taken as aforesaid shall be held by any person residing without the territory or subject to any legal disability, the court may appoint a proper person, who shall give bonds, with sufficient surety or sureties, for the faithful execution of his trust, and who may represent in court the person disqualified or absent as aforesaid, when the same proceedings shall be had in reference to the appraisement of the premises to be taken and with the same effect as have been already described. And the title of the company to the land taken by virtue of this act shall not be affected nor impaired by reason of any failure by any guardian to discharge faithfully his trust. And in case it shall be necessary for either of the said companies to enter upon lands which are unoccupied, and of which there is no apparent owner or claimant, it may proceed to take and use the same for the purpose of its said railroad, and may institute proceedings in manner described for the purpose of ascertaining the value of and acquiring a title to the same; and the court may determine the kind of notice to be served on such owner or owners, and may in its discretion appoint an agent or guardian to represent such owner or owners in case of his or their incapacity or non-appearance. But in case no claimant shall appear within six years from the time of the opening of said road across any land, all claim to damages against said company shall be barred. It shall be competent for the legal guardian of any infant or any other person under guardianship to agree with the proper company as to damages sustained by reason of the taking of any lands of any such person under disability, as aforesaid, for the use as aforesaid; and upon such agreement being made, and approved by the court having supervision of the official acts of said guardian, the said guardian shall have full power to make and execute a conveyance thereof to the said company which shall vest the title thereto in the said company.

Title after appeal.

Absentees and infants.

Unoccupied lands, how acquired.

Damages, how disposed of.

SEC. 4. *And be it further enacted*, That section three of said act be hereby amended by striking out the word "five," where the same occurs in said section, and by inserting in lieu thereof the word "ten;" and by striking out the word "ten," where the same occurs in said section, and inserting in lieu thereof the word "twenty." And section seven of

Sec. 3, 1862, amended, doubling grant of land.

Sec. 7, 1862, amended, withdrawing land from sale.

said act is hereby amended by striking out the word "fifteen," where the same occurs in said section, and inserting in lieu thereof the word "twenty-five." And the term "mineral land," wherever the same occurs in this act, and the act to which this is an amendment, shall not be construed to include coal and iron land. And any lands granted by this act or the act to which this is an amendment shall not defeat or impair any pre-emption, homestead, swamp land, or other lawful claim, nor include any government reservation or mineral lands, or the improvements of any bona fide settler, on any lands returned and denominated as mineral lands, and the timber necessary to support his said improvements as a miner or agriculturist, to be ascertained under such rules as have been or may be established by the Commissioner of the General Land Office, in conformity with the provisions of the pre-emption laws: *Provided*, That the quantity thus exempted by the operation of this act, and the act to which this act is an amendment, shall not exceed 160 acres for each settler who claims as an agriculturist, and such quantity for each settler who claims as a miner, as the said Commissioner may establish by general regulation: *Provided, also*, That the phrase, "but where the same shall contain timber, the timber thereon is hereby granted to said company," in the proviso to said section three, shall not apply to the timber growing or being on any land farther than ten miles from the center line of any one of said roads or branches mentioned in said act, or in this act. And all lands shall be excluded from the operation of this act, and of the act to which this act is an amendment, which were located, or selected to be located, under the provisions of an act entitled "An act donating lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts," approved July 2, 1862, and notice thereof given at the proper land office.

Coal and iron not minerals.

Certain lands not to be granted.

160 acres only exempted.

Timber to be company's. Sec. 3, 1862.

Other lands exempted.

SEC. 5. *And be it further enacted*, That the time for designating the general route of said railroad, and of filing the map of the same, and the time for the completion of that part of the railroads required by the terms of said act of each company, be, and the same is hereby, extended one year from the time in said act designated;* and that the

Time extended one year. Sec. 10, 1862, amended.

* By joint resolution of Congress, approved March 3, 1865, it is provided: "That all maps, profiles, and other drawings, together with estimates and reports connected with explorations and surveys for the Pacific Railroad, made under the authority of the government, and all other information upon the subject of said road in the possession of any department of the government, be transferred to the Department of the Interior; and that the Secretary of the Interior be authorized to furnish

Central Pacific Railroad Company of California shall be required to complete twenty-five miles of their said road in each year thereafter, and the whole to the state line within four years, and that only one-half of the compensation for services rendered for the government by said companies shall be required to be applied to the payment of the bonds issued by the government in aid of the construction of said roads.

25 miles per year. Four years to State line.

Government to pay one-half for services.

SEC. 6. *And be it further enacted*, That the proviso to section four of said act is hereby modified as follows, viz: And the President of the United States is hereby authorized, at any time after the passage of this act, to appoint for each and every of said roads three commissioners, as provided for in the act to which this act is amendatory; and the verified statement of the president of the California company, required by said section four, shall be filed in the office of the United States surveyor-general for the State of California, instead of being presented to the President of the United States; and the said surveyor-general shall thereupon notify the said commissioners of the filing of such statement, and the said commissioners shall thereupon proceed to examine the portion of said railroad and telegraph line so completed, and make their report thereon to the President of the United States, as provided by the act of which this is amendatory. And such statement may be filed, and such railroad and telegraph line be examined and reported on by the said commissioners, and the requisite amount of bonds may be issued and the lands appertaining thereto may be set apart, located, entered, and patented, as provided in this act and the act to which this is amendatory, upon the construction by said railroad company of California of any portion of not less than twenty consecutive miles of their said railroad and telegraph line, upon the certificate of said commissioners that such portion is completed as required by the act to which this is amendatory. And section ten of the act of which this is amendatory is hereby amended by inserting, after the words "United States," in the last clause, the words "and states intervening."

Sec. 4, 1862, modified, three commissioners, &c.

Affidavit, &c., of C. P. R. R. Co. to be filed in California.

Lands patented. See sec. 4, 1862. Also, sec. 8, this act.

Sec. 10, 1862, amended.

SEC. 7. *And be it further enacted*, That so much of section seventeen of said act as provides for a reservation by the government of a portion of the bonds to be issued to aid in the construction of the said railroads is hereby repealed.

Reservation of bonds by sec. 17, 1862, repealed.

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copies of the same, free of charge, to the Union Pacific Railroad Company, so far as they may be useful in aiding said company in determining the proper route for said road."

Failure of one company not to affect others. Sec. 17, 1862, altered.

And the failure of any one company to comply fully with the conditions and requirements of this act, or the act to which this is amendatory, shall not work a forfeiture of the rights, privileges, or franchise of any other company or companies that shall have complied with the same.

SEC. 8. *And be it further enacted*, That for the purpose of facilitating the work on said railroad, and of enabling the said company as early as practicable to commence the grading of said railroad in the region of the mountains, between the eastern base of the Rocky Mountains and the western base of the Sierra Nevada Mountains, so that the same may be finally completed within the time required by law, it is hereby provided that whenever the chief engineer of the said company, and said commissioners, shall certify that a certain proportion of the work required to prepare the road for the superstructure on any such section of twenty miles is done (which said certificate shall be duly verified), the Secretary of the Treasury is hereby authorized and required, upon the delivery of such certificate, to issue to said company a proportion of said bonds, not exceeding two thirds of the amount of bonds authorized to be issued under the provisions of the act, to aid in the construction of such section of twenty miles, nor in any case exceeding two thirds of the value of the work done. The remaining one third to remain until the said section is fully completed and certified by the commissioners appointed by the President, according to the terms and provisions of the said act. And no such bonds shall issue to the Union Pacific Railroad Company for work done west of Salt Lake City under this section, more than three hundred miles in advance of the completed continuous line of said railroad from the point of beginning on the one hundredth meridian of longitude.

Partial issue of bonds on uncompleted work. Sec. 11, 1862, modified.

Two-thirds on graded portions. See sec. 6 of this act.

U. P. R. R. Co. cannot receive for more than 300 miles in advance west of Salt Lake City.

SEC. 9. *And be it further enacted*, That, to enable any one of said corporations to make convenient and necessary connections with other roads, it is hereby authorized to establish and maintain all necessary ferries upon and across the Missouri river and other rivers which its road may pass in its course; and authority is hereby given said corporation to construct bridges over said Missouri river and all other rivers for the convenience of said road:* *Provided*,

Ferries and bridges.

*AN ACT to authorize the Union Pacific Railroad Company to issue its bonds to construct a bridge across the Missouri River at Omaha, Nebraska, and Council Bluffs, Iowa. (16 Stat., 430.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the more perfect connection of any railroads that are or shall be constructed to the Missouri

That any bridge or bridges it may construct over the Missouri river, or any other navigable river on the line of said road, shall be constructed with suitable and proper draws for the passage of steamboats, and shall be built, kept, and maintained, at the expense of said company, in such manner as not to impair the usefulness of said river for navigation to any greater extent than such structures of the most approved character necessarily do: *And provided further*, That any company authorized by this act to construct its road and telegraph line from the Missouri river to the initial point aforesaid, may construct its road and telegraph line so as to connect with the Union Pacific Railroad at any point westwardly of such initial point, in case such company shall deem such westward connection more practicable or desirable; and in aid of the construction of so much of its road and telegraph line as shall be a departure from the route hereinbefore provided for its road, such company shall be entitled to all the benefits and be subject to all the conditions and restrictions of this act: *Provided further, however*, That the bonds of the United States shall not be issued to such company for a greater amount than is hereinbefore provided, if the same had united with the Union Pacific Railroad on the one hundredth degree of longitude; nor

Roads may connect west of initial point.

No increased amount of bonds &c.

river, at or near Council Bluffs, Iowa, and Omaha, Nebraska, the Union Pacific Railroad Company be, and it is hereby, authorized to issue such bonds, and secure the same by mortgage on the bridge and approaches and appurtenances, as it may deem needful to construct and maintain its bridge over said river, and the tracks and depots required to perfect the same, as now authorized by law of Congress; and said bridge may be so constructed as to provide for the passage of ordinary vehicles and travel, and said company may levy and collect tolls and charges for the use of the same; and for the use and protection of said bridge and property the Union Pacific Railway Company shall be empowered, governed, and limited by the provisions of the act entitled "An act to authorize the construction of certain bridges, and to establish them as post roads," approved July twenty-five, eighteen hundred and sixty-six, so far as the same is applicable thereto: *And provided*, That nothing in this act shall be so construed as to change the eastern terminus of the Union Pacific Railroad from the place where it is now fixed under existing laws, nor to release said Union Pacific Railroad Company, or its successors, from its obligation as established by existing laws: *Provided, also*, That Congress shall at all times have power to regulate said bridge, and the rates for the transportation of freight and passengers over the same, and the local travel hereinbefore provided for. And the amount of bonds herein authorized shall not exceed two and a half millions of dollars: *Provided*, That if said bridge shall be constructed as a draw bridge, the same shall be constructed with spans of not less than two hundred feet in length in the clear on each side of the central or pivot pier of the draw.

Approved February 24, 1871.

shall such company be entitled to receive any greater amount of alternate sections of public lands than are also herein provided.

First mortgage bonds may have lien, prior to governments.

SEC. 10. *And be it further enacted*, That section five of said act be so modified and amended that the Union Pacific Railroad Company, the Central Pacific Railroad Company, and any other company authorized to participate in the construction of said road, may, on the completion of each section of said road, as provided in this act and the act to which this act is an amendment, issue their first mortgage bonds on their respective railroad and telegraph lines to an amount not exceeding the amount of the bonds of the United States, and of even tenor and date, time of maturity, rate and character of interest, with the bonds authorized to be issued to said railroad companies respectively. And the lien of the United States bonds shall be subordinate to that of the bonds of any or either of said companies hereby authorized to be issued on their respective roads, property, and equipments, except as to the provisions of the sixth section of the act to which this act is an amendment, relating to the transmission of dispatches, and the transportation of mails, troops, munitions of war, supplies, and public stores for the government of the United States. And said section is further amended by striking out the word "forty," and inserting in lieu thereof the words "on each and every section of not less than twenty."

Sec. 5, 1862, modified.

See sec. 1, act of 1865.

Lien of U. S. bonds to be subordinate, &c.

20 miles instead of 40 miles, as in sec. 5, act of 1862.

Provision for bonds already issued by any companies.

SEC. 11. *And be it further enacted*, That, if any of the railroad companies, entitled to bonds of the United States or to issue their first mortgage bonds herein provided for, has, at the time of the approval of this act, issued or shall thereafter issue any of its own bonds or securities in such form and manner as in law or equity to entitle the same to priority or preference of payment to the said guaranteed bonds, or said first mortgage bonds, the amount of such corporate bonds outstanding and unsatisfied, or uncancelled, shall be deducted from the amount of such government and first mortgage bonds which the company may be entitled to receive and issue; and such an amount only of such government bonds and such first mortgage bonds shall be granted, or permitted, as, added to such outstanding, unsatisfied, or uncancelled bonds of the company, shall make up the whole amount per mile to which the company would otherwise have been entitled: *And provided further*, That, before any bonds shall be so given by the United States, the company claiming them shall present to the secretary of the treasury an affidavit of the president and secretary

Affidavit of am't of outstanding company bonds.

of the company, to be sworn to before the judge of a court of record, setting forth whether said company has issued any such bonds or securities, and, if so, particularly describing the same, and such other evidence as the secretary may require, so as to enable him to make the deduction herein required; and such affidavit shall then be filed and deposited in the office of the secretary of the interior, and any person swearing falsely to any such affidavit shall be deemed guilty of perjury, and, on conviction thereof, shall be punished as aforesaid: *Provided, also*, That no land granted by this act shall be conveyed to any party or parties, and no bonds shall be issued to any company or companies, party or parties, on account of any road or part thereof, made prior to the passage of the act to which this act is an amendment, or made subsequent thereto, under the provisions of any act or acts other than this act and the act amended by this act.

No land or bonds to go to any co. on road made prior to act of 1862.

SEC. 12. *And be it further enacted*, That the Leavenworth, Pawnee & Western Railroad Company, now known as the Union Pacific Railroad Company, eastern division, shall build the railroad from the mouth of Kansas river, by the way of Leavenworth, or, if that be not deemed the best route, then the said company shall, within two years, build a railroad from the city of Leavenworth to unite with the main stem at or near the city of Lawrence; but to aid in the construction of said branch the said company shall not be entitled to any bonds. And, if the Union Pacific Railroad Company shall not be proceeding in good faith to build the said railroad through the territories when the Leavenworth, Pawnee & Western Railroad Company, now known as the Union Pacific Railroad Company, eastern division, shall have completed their road to the hundredth degree of longitude, then the last named company may proceed to make said road westward until it meets and connects with the Central Pacific Railroad Company on the same line. And the said railroad, from the mouth of Kansas river to the one hundredth meridian of longitude, shall be made by the way of Lawrence and Topeka, or on the bank of the Kansas river opposite said towns: *Provided*, That no bonds shall be issued or land certified by the United States to any person or company for the construction of any part of the main trunk line of said railroad west of the one hundredth meridian of longitude and east of the Rocky Mountains, until said road shall be completed from or near Omaha, on the Missouri river, to the said one hundredth meridian of longitude.

Leavenworth and Lawrence roads, no bonds.

If built to 100th meridian, may proceed in default of U. P. R. R.

By way of Lawrence and Topeka, or opposite to 100th meridian. West of that line no bonds shall be issued, &c.

Directors, 15; government directors, 5. Sec. 1, 1862, modified.

SEC. 13. *And be it further enacted*, That at and after the next election of directors, the number of directors to be elected by the stockholders shall be fifteen; and the number of directors to be appointed by the President shall be five; and the President shall appoint three additional directors to serve until the next regular election, and thereafter five directors. At least one of said government directors shall be placed on each of the standing committees of said company, and at least one on every special committee that may be appointed. The government directors shall, from time to time, report to the Secretary of the Interior, in answer to any inquiries he may make of them, touching the condition, management, and progress of the work; and shall communicate to the Secretary of the Interior, at any time, such information as should be in the possession of the department. They shall, as often as may be necessary to a full knowledge of the condition and management of the line, visit all portions of the line of the road, whether built or surveyed; and, while absent from home, attending to their duties as directors, shall be paid their actual travelling expenses, and be allowed and paid such reasonable compensation for their time actually employed as the board of directors may decide.

One government director on committees.

Government directors to report, &c.

To visit road, &c.

Directors, when elected and where—(Sec. 1, 1862.) for one year.

SEC. 14. *And be it further enacted*, That the next election for directors of said railroad shall be held on the first Wednesday of October* next, at the office of said company in the city of New York, between the hours of ten o'clock a. m. and four o'clock p. m. of said day; and all subsequent regu-

* Changed by joint resolution approved December 20, 1867, as follows:

JOINT RESOLUTION changing the time of holding the annual meeting of the stockholders of the Union Pacific Railroad Company.—[15 Stat., 245.]

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the time of holding the annual meeting of the stockholders of the Union Pacific Railroad Company, for the choice of directors, is hereby changed from the first Wednesday in October to the first Wednesday following the fourth day of March, and the stockholders are authorized to determine the place at which such annual meeting shall be held at the last annual meeting of the stockholders immediately preceding such annual meeting: *Provided*, The same shall be held at either of the cities of New York, Washington, Boston, Baltimore, Philadelphia, Cincinnati, Chicago, or St. Louis: *And provided further*, That on the election of directors herein provided for, to take place in March, Anno Domini eighteen hundred and sixty-eight, the terms of office of all persons then acting or claiming the right to act as directors of said company, shall cease and determine.

lar elections shall be held annually thereafter at the same;* and the directors shall hold their office for one year, and until their successors are qualified.

Road to be used as one continuous line. See sec. 12, act of 1862.

SEC. 15. *And be it further enacted*, That the several companies authorized to construct the aforesaid roads are hereby required to operate and use said roads and telegraph for all purposes of communication, travel, and transportation, so far as the public and the government are concerned, as one continuous line; and, in such operation and use, to afford and secure to each equal advantages and facilities as to rates, time, and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others. And it shall not be lawful for the proprietors of any line of telegraph authorized by this act, or the act amended by this act, to refuse or fail to convey for all persons requiring the transmission of news and messages of like character, on pain of forfeiting to the person injured, for each offence, the sum of one hundred dollars, and such other damage as he may have suffered on account of said refusal or failure, to be sued for and recovered in

Must telegraph for all persons. See sec. 19, act of 1862.

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*The second section of the act of July 27, 1868, provides [15 Stat., 243]:

"That any corporation, or any member thereof, other than a banking corporation, organized under a law of the United States, and against which a suit at law or in equity has been or may be commenced in any court other than a circuit or district court of the United States, for any liability or alleged liability of such corporation, or any member thereof as such member, may have such suit removed from the court in which it may be pending, to the proper circuit or district court of the United States, upon filing a petition therefor, verified by oath, either before or after issue joined, stating that they have a defence arising under or by virtue of the constitution of the United States, or any treaty or law of the United States, and offering good and sufficient surety for entering in such court, on the first day of its session, copies of all process, pleadings, depositions, testimony, and other proceedings in said suit, and doing such other appropriate acts as are required to be done by the act entitled 'An act for the removal of causes in certain cases from state courts,' approved July twenty-seventh, eighteen hundred and sixty-six; and it shall be thereupon the duty of the court to accept the surety and proceed no further in the suit; and the said copies being entered as aforesaid in such court of the United States, the suit shall then proceed in the same manner as if it had been brought there by original process, and all of the provisions of said act in this section referred to, respecting any bail, attachment, injunction, or other restraining process, and respecting any bond of indemnity or other obligation given upon the issuing or granting of any attachment, injunction, or other restraining process, shall apply with like force and effect in all respects to similar matters, process, or things in the suits for the removal of which this act provides."

any court of the United States, or of any state or territory of competent jurisdiction.

Companies may consolidate. See sec. 16, act of 1862; also sec. 10, 1862.

SEC. 16. *And be it further enacted*, That any two or more of the companies, authorized to participate in the benefits of this act, are hereby authorized at any time to unite and consolidate their organizations, as the same may or shall be, upon such terms and conditions and in such manner as they may agree upon, and as shall not be incompatible with this act or the laws of the state or states in which the roads of such companies may be, and to assume and adopt such corporate name and style as they may agree upon, with a capital stock not to exceed the actual cost of the roads so to be consolidated, and shall file a copy of such consolidation in the Department of the Interior; and thereupon such organization, so formed and consolidated, shall succeed to, possess, and be entitled to receive from the government of the United States, all and singular the grants, benefits, immunities, guaranties, acts, and things to be done and performed, and be subject to the same terms, conditions, restrictions, and requirements which said companies, respectively at the time of such consolidation, are or may be entitled or subject to under this act, in place and substitution of said companies so consolidated, respectively. And all other provisions of this act, so far as applicable, relating or in any manner appertaining to the companies so consolidated, or either thereof, shall apply and be of force as to such consolidated organization. And in case, upon the completion by such consolidated organization of the roads or either of them, of the companies so consolidated, any other of the road or roads of either of the other companies authorized as aforesaid (and forming, or intended or necessary to form, a portion of a continuous line from each of the several points on the Missouri river, hereinbefore designated, to the Pacific coast,) shall not have constructed the number of miles of its said road within the time herein required, such consolidated organization is hereby authorized to continue the construction of its road and telegraph in the general direction and route upon which such incomplete or unconstructed road is hereinbefore authorized to be built, until such continuation of the road of such consolidated organization shall reach the constructed road and telegraph of said other company, and at such point to connect and unite therewith; and for and in aid thereof the said consolidated organization may do and perform, in reference to such portion of road and telegraph as shall so be in continuation of its constructed road and telegraph, and to the con-

Consolidated companies may build portion of the line left uncompleted by any company.

struction and equipment thereof, all and singular the several acts and things hereinbefore provided, authorized, or granted to be done by the company hereinbefore authorized to construct and equip the same, and shall be entitled to similar and like grants, benefits, immunities, guaranties, acts, and things to be done and performed by the government of the United States, by the President of the United States, by the Secretaries of the Treasury and Interior, and by commissioners, in reference to such company, and to such portion of the road hereinbefore authorized to be constructed by it, and upon the like and similar terms and conditions so far as the same are applicable thereto. And said consolidated company shall pay to said defaulting company the value, to be estimated by competent engineers, of all the work done and material furnished by said defaulting company, which may be adopted and used by said consolidated company in the progress of the work under the provisions of this section: *Provided, nevertheless,* That said defaulting company may, at any time before receiving pay for its said work and material, as hereinbefore provided, on its own election, pay said consolidated company the value of the work done and material furnished by said consolidated company, to be estimated by competent engineers, necessary for and used in the construction of the road of said defaulting company, and resume the control of its said road; and all the rights, benefits, and privileges which shall be acquired, possessed, or exercised, pursuant to this section, shall be to that extent an abatement of the rights, benefits, and privileges hereinbefore granted to such other company. And in case any company authorized thereto shall not enter into such consolidated organization, such company, upon the completion of its road as hereinbefore provided, shall be entitled to, and is hereby authorized to, continue and extend the same under the circumstances, and in accordance with the provisions of this section, and to have all the benefits thereof, as fully and completely as are herein provided touching such consolidated organization. And in case more than one such consolidated organization shall be made, pursuant to this act, the terms and conditions of this act, hereinbefore recited as to one, shall apply in like manner, force, and effect to the other. *Provided, however,* That rights and interests at any time acquired by one such consolidated organization shall not be impaired by another thereof. It is further provided that, should the Central Pacific Railroad Company of California complete their line to the eastern line of the State of California before the line

Powers and duties of consolidated organization.

When Central Pacific Road shall reach eastern line of said State, may go on

150 miles if road not met. Sec. 10, 1862, amended. Also see sec. 2, 1866.

of the Union Pacific Railroad Company shall have been extended westward so as to meet the line of said first named company, said first named company may extend their line of road eastward one hundred and fifty miles,* on the established route, so as to meet and connect with the line of the Union Pacific road, complying in all respects with the provisions and restrictions of this act as to said Union Pacific road, and upon doing so shall enjoy all the rights, privileges, and benefits conferred by this act on said Union Pacific Railroad Company.

Sec. 14, 1862, amended as to Sioux City Branch Road.

SEC. 17. *And be it further enacted*, That so much of section fourteen of said act as relates to a branch from Sioux City, be, and the same is hereby, amended so as to read as follows: That whenever a line of railroad shall be completed through the States of Iowa or Minnesota to Sioux City, such company, now organized or as may hereafter be organized, under the laws of Iowa, Minnesota, Dakota, or Nebraska, as the President of the United States, by its request, may designate or approve for that purpose, shall construct and operate a line of railroad and telegraph from Sioux City, upon the most direct and practicable route, to such a point on, and so as to connect with, the Iowa branch of the Union Pacific Railroad from Omaha, or the Union Pacific Railroad, as such company may select, and on the same terms and conditions as are provided in this act and the act to which this is an amendment, for the construction of the said Union (and) Pacific Railroad and telegraph line and branches; and said company shall complete the same at the rate of fifty miles per year: *Provided*, That said Union Pacific Railroad Company shall be, and is hereby, released from the construction of said branch. And said company constructing said branch shall not be entitled to receive in bonds an amount larger than the said Union Pacific Railroad Company would be entitled to receive if it had constructed the branch under this act and the act to which this is an amendment; but said company shall be entitled to receive alternate sections of land for ten miles in width on each side of the same along the whole length of said branch: *And provided further*, That if a railroad should not be completed to Sioux City, across Iowa or Minnesota, within eighteen months from the date of this act, then said company designated by the President, as aforesaid, may commence, continue, and complete the construc-

*Amended by the act of July 3, 1866, so as to allow the Central Pacific to continue constructing eastward until it should meet the line of the Union Pacific.

tion of said branch as contemplated by the provisions of this act: *Provided, however*, That if the said company so designated by the President as aforesaid shall not complete the said branch from Sioux City to the Pacific Railroad within ten years from the passage of this act, then, and in that case, all the railroad which shall have been constructed by said company shall be forfeited to and become the property of the United States.

Burlington & M. R. R. Co. may extend road, &c.

SEC. 18. *And be it further enacted*, That the Burlington and Missouri River Railroad Company, a corporation organized under and by virtue of the laws of the state of Iowa, be, and hereby is, authorized to extend its road through the territory of Nebraska from the point where it strikes the Missouri river, south of the mouth of the Platte river, to some point not further west than the one hundredth meridian of west longitude, so as to connect, by the most practicable route, with the main trunk of the Union Pacific Railroad, or that part of it which runs from Omaha to the said one hundredth meridian of west longitude.* And for the purpose of enabling said Burlington and Missouri River Railroad Company to construct that portion of their road herein authorized, the right of way through the public lands is hereby granted to said company for the construction of said road. And the right, power, and authority is hereby given to said company to take from the public lands adjacent to the line of said road, earth, stone, timber, and other materials for the construction thereof. Said right of way is granted to said company to the extent of two hundred feet where it may pass over the public lands, including all necessary grounds for stations, buildings, work-shops, depots, machine-shops, switches, side-tracks, turn-tables, and water-stations. And the United States shall extinguish, as rapidly as may be, consistent with public policy and the welfare of the said Indians, the Indian titles to all lands falling under the operation of this section and required for the said right of way and grant of land herein made.

Right o way; &c.

U. S. to extinguish Indian titles.—Sec. 2, 1866.

Land grants to Burlington & M. R. R. Co.

SEC. 19. *And be it further enacted*, That for the purpose of aiding in the construction of said road, there be, and hereby is, granted to the said Burlington and Missouri River Railroad Company, every alternate section of public land (excepting mineral lands as provided in this act) designated by odd numbers, to the amount of ten alternate sections per mile on each side of said road, on the line thereof, and not sold, reserved, or otherwise disposed of by the United

* Act of May 6, 1870, authorizes connection to be made at or near the Fort Kearney reservation.

States, and to which a pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed: *Provided*, That said company shall accept this grant within one year from the passage of this act, by filing such acceptance with the Secretary of the Interior, and shall also establish the line of said road, and file a map thereof with the Secretary of the Interior within one year of the date of said acceptance, when the said Secretary shall withdraw the lands embraced in this grant from market.

Burlington & M.R.R.Co lands, &c.

SEC. 20. *And be it further enacted*, That whenever said Burlington and Missouri River Railroad Company shall have completed twenty consecutive miles of the road mentioned in the foregoing section, in the manner provided for other roads mentioned in this act and the act to which this is an amendment, the President of the United States shall appoint three commissioners to examine and report to him in relation thereto; and if it shall appear to him that twenty miles of said road have been completed as required by this act, then, upon certificate of said commissioners to that effect, patents shall issue conveying the right and title to said lands to said company on each side of said road, as far as the same is completed, to the amount aforesaid; and such examination, report, and conveyance, by patents, shall continue from time to time, in like manner, until said road shall have been completed. And the President shall appoint said commissioners, to fill vacancies in said commission, as provided in relation to other roads mentioned in the act to which this is an amendment. And the said company shall be entitled to all the privileges and immunities granted to the Hannibal and St. Joseph's Railroad Company by the said last mentioned act, so far as the same may be applicable: *Provided*, That no government bonds shall be issued to the said Burlington and Missouri River Railroad Company to aid in the construction of said extension of its road; and provided further, that said extension shall be completed within the period of ten years from the passage of this act.

Bonds.

Land not to be conveyed to any company until they pay cost of survey, &c. Sec. 4, 1862. Sec. 6, 1864.

SEC. 21. *And be it further enacted*, That before any land granted by this act shall be conveyed to any company or party entitled thereto under this act, there shall first be paid into the Treasury of the United States the cost of surveying, selecting, and conveying the same by the said company, or party in interest as the titles shall be required by said company, which amount shall, without any further appropriation, stand to the credit of the proper account, to be used by the Commissioner of the General Land Office, for the prosecution of the survey of the public lands along the line of said

road, and so from year to year, until the whole shall be completed, as provided under the provisions of this act.*

SEC. 22. *And be it further enacted*, That Congress may at any time, alter, amend, or repeal this act. Sec. 18, 1864.

Approved July 2, 1864.

AMENDMENT OF MARCH 3, 1865.

AN ACT to amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred and sixty-two, and to amend an act amendatory thereof, approved July second, eighteen hundred and sixty-four. 13 Stat., 373.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section ten of said act of July second, eighteen hundred and sixty-four, be so modified and amended as to allow the Central Pacific Railroad Company, and the Western Pacific Railroad Company, of California, the Union Pacific Railroad Company, the Union Pacific Railroad Company, eastern division, and all other companies provided for in the said acts of the second of July, eighteen hundred and sixty-four, to issue their six per centum thirty years' bonds, interest payable in any lawful money of the United States, upon their separate roads. And the said companies are hereby authorized to issue, respectively, their bonds to the extent of one hundred miles in advance of a continuous completed line of construction. May issue bonds 100 miles in advance of completed line, interest payable in any lawful money. Sec. 10, 1864.

SEC. 2. *And be it further enacted*, That the assignment made by the Central Pacific Railroad Company of California to the Western Pacific Railroad Company of said state, of the right to construct all that portion of said railroad and telegraph from the city of San Jose to the city of Sacramento, is hereby ratified and confirmed to the said Western Pacific Railroad Company, with all the privileges and benefits of the several acts of Congress relating thereto, and subject to all the conditions thereof: *Provided*, That the Assignment confirmed to San Jose and Sacramento Road.

re- not ital s or oth to equ ceeds

*In the act of July 15, 1870, which, among many other appropriations, tains those for the survey of the public lands within the limits of the ect of this company in Colorado, Wyoming, and Utah, it is "*Provided*, the foregoing appropriations for the surveys of public lands within its of the Union Pacific Railroad Company's land grant shall be nal upon the compliance of said company or party in interest requirements of the twenty-first section of the act of July sec- hteen hundred and sixty-four."

time within which the said Western Pacific Railroad Company shall be required to construct the first twenty miles of their said road shall be one year from the first day of July, eighteen hundred and sixty-five, and that the entire road shall be completed from San Jose to Sacramento, connecting at the latter point with the said Central Pacific Railroad, within four years thereafter.

Approved March 3, 1865.

AMENDMENT OF JULY 3, 1866.

14 Stat., 79.

AN ACT to amend an act entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military, and other purposes,' approved July first, eighteen hundred and sixty-two," approved July second, eighteen hundred and sixty-four.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Union Pacific Railway Company, eastern division, is hereby authorized to designate the general route of their said road, and to file a map thereof, as now required by law, at any time before the first day of December, eighteen hundred and sixty-six; and upon the filing of the said map, showing the general route of said road, the lands along the entire line thereof, so far as the same may be designated, shall be reserved from sale by order of the Secretary of the Interior: *Provided*, That said company shall be entitled to only the same amount of the bonds of the United States to aid in the construction of their line of railroad and telegraph as they would have been entitled to if they had connected their said line with the Union Pacific Railroad on the one hundredth degree of longitude, as now required by law: *And provided further*, That said company shall connect their line of railroad and telegraph with the Union Pacific Railroad, but not at a point more than fifty miles westwardly from the meridian of Denver in Colorado.

U. P. R. R. to proceed till met.

SEC. 2. *And be it further enacted*, That the Union Pacific Railroad Company, with the consent and approval of the Secretary of the Interior, are hereby authorized to locate, construct, and continue their road from Omaha, in Nebraska territory, westward, according to the best and most practicable route and without reference to the initial point on the one hundredth meridian of west longitude, as now provided by law, in a continuous completed line, until they shall meet

and connect with the Central Pacific Railroad Company of California; and the Central Pacific Railroad Company of California, with the consent and approval of the Secretary of the Interior, are hereby authorized to locate, construct, and continue their road eastward, in a continuous completed line, until they shall meet and connect with the Union Pacific Railroad;* *Provided*, That each of the above named companies shall have the right, when the nature of the work to be done, by reason of deep cuts and tunnells, shall for the expeditious construction of the Pacific Railroad require it, to work for an extent of not to exceed three hundred miles in advance of their continuous completed line.

Central Pacific may continue their road eastward, with consent of Secretary of the Interior till met by U. P. R. R. Co. Sec. 10, 1862, and sec. 16, 1864, amended.

Approved July 3, 1866.

AN ACT RELATING TO THE DENVER PACIFIC, MARCH 3. 1869.

AN ACT to authorize the transfer of lands granted to the Union Pacific Railway Company, Eastern Division, between Denver and the point of its connection with the Union Pacific Railway, to the Denver Pacific Railway and Telegraph Company, and to expedite the completion of railroads to Denver in the Territory of Colorado. 15 Stat., 324.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Union Pacific Railway Company, Eastern Division, be,

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* The two companies having agreed in general terms upon the point of junction of the two roads, Congress passed [16 Stat., 121]—

AN ACT to fix the point of junction of the Union Pacific Railroad Company and the Central Pacific Railroad Company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the common terminus and point of junction of the Union Pacific Railroad Company and the Central Pacific Railroad Company shall be definitely fixed and established on the line of railroad as now located and constructed, northwest of the station at Ogden, and within the limits of the sections of land hereinafter mentioned, viz., Section thirty-six of township seven, of range two, situate north and west of the principal meridian and base line in the territory of Utah, and sections twenty-five, twenty-six, and thirty-five of township seven, of range two and section six of township six, and sections thirty and thirty-one of township seven, of range one, and sections one and two of township six, of range two, all situate north and west of said principal meridian and base line; and said companies are hereby authorized to enter upon, use, and possess said sections, which are hereby granted to them in equal shares, with the same rights, privileges, and obligations now by law provided with reference to other lands granted to said railroads: *Provided, however*, That the Secretary of the Interior shall designate a section of land in said township seven, of range two, belonging to said companies, and reserve the same for the benefit of schools in said territory, in accordance with the act of February twenty-one, eighteen hundred and fifty-five, establishing the office of Surveyor-General of Utah, and to grant land for school and university purposes: *Provided, also*, That said companies shall pay for any additional lands acquired by this act at the rate of two dollars and fifty cents an acre: *And provided further*, That no rights of private persons shall be affected by this act.

Approved May 6, 1870.

and it hereby is authorized to contract with the Denver Pacific Railway and Telegraph Company, a corporation existing under the laws of the Territory of Colorado, for the construction, operation and maintenance of that part of its line of railroad and telegraph between Denver City and its point of connection with the Union Pacific Railroad, which point shall be at Cheyenne, and to adopt the road-bed already graded by said Denver Pacific Railway and Telegraph Company as said line, and to grant to said Denver Pacific Railway and Telegraph Company the perpetual use of its right of way and depot grounds, and to transfer to it all the rights and privileges, subject to all the obligations pertaining to said part of its line.

SEC. 2. *And be it further enacted*, That the said Union Pacific Railway Company, Eastern Division, shall extend its railroad and telegraph to a connection at the city of Denver, so as to form with that part of its line herein authorized to be constructed, operated and maintained by the Denver Pacific Railway and Telegraph Company, a continuous line of railroad and telegraph from Kansas City, by way of Denver, to Cheyenne. And all the provisions of law for the operation of the Union Pacific Railroad, its branches and connections, as a continuous line, without discrimination, shall apply the same as if the road from Denver to Cheyenne had been constructed by the said Union Pacific Railway Company, Eastern Division, but nothing herein shall authorize the said Eastern Division Company to operate the road or fix the rates of tariff for the Denver Pacific Railway and Telegraph Company.

SEC. 3. *And be it further enacted*, That said companies are hereby authorized to mortgage their respective portions of said road, as herein defined, for an amount not exceeding thirty-two thousand dollars per mile, to enable them respectively to borrow money to construct the same; and that each of said companies shall receive patents to the alternate sections of land along their respective lines of road, as herein defined, in like manner and within the same limits as is provided by law in the case of lands granted to the Union Pacific Railway Company, Eastern Division; *Provided*, That neither of the Companies hereinbefore mentioned shall be entitled to subsidy in United States bonds under provisions of this act.

Approved March 3, 1869.

JOINT RESOLUTION OF APRIL 10, 1869.

JOINT RESOLUTION for the protection of the interests of the United States in the Union Pacific Railroad Company, the Central Pacific Railroad Company, and for other purposes. 16 Stat., 56.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the stockholders of the Union Pacific Railroad Company, at a meeting to be held on the twenty-second day of April, eighteen hundred and sixty-nine, at the city of Boston (with power to adjourn from day to day), shall elect a board of directors for the ensuing year; and said stockholders are hereby authorized to establish their general office at such place in the United States as they may select at said meeting: *Provided*, That the passage of this resolution shall not confer any other right upon said Union Pacific Railroad Company than to hold such election, or be held in any manner to relinquish or waive any rights of the United States to take advantage of any act or neglect of said Union Pacific Railroad Company heretofore done or omitted whereby the rights of the general government have been or may be prejudiced: *And provided further*, That the common terminus of the Union Pacific and the Central Pacific railroads shall be at or near Ogden: and the Union Pacific Railroad Company shall build, and the Central Pacific Railroad Company pay for and own, the railroad from the terminus aforesaid to Promontory Summit, at which point the rails shall meet and connect and form one continuous line.

Stockholders of Union Pacific R. R. Co. to elect a board of directors.

To establish their general office.

No other right conferred or waived hereby.

Common terminus of the Union Pacific and Central Pacific railroads to be at or near Ogden, &c.

SEC. 2. *And be it further resolved*, That to ascertain the condition of the Union Pacific Railroad and the Central Pacific Railroad, the President of the United States is authorized to appoint a board of eminent citizens, not exceeding five in number, and who shall not be interested in either road, to examine and report upon the condition of, and what sum or sums, if any, will be required to complete, each of said roads, for the entire length thereof, to the said terminus as a first-class railroad, in compliance with the several acts relating to said roads, and the expense of said board, including an allowance of ten dollars to each for their services for each day employed in such examination and report, to be paid equally by said companies.

The President to appoint a commission to examine and report upon the roads.

Expenses and pay of commissioners.

SEC. 3. *And be it further resolved*, That the President is hereby authorized and required to withhold from each of said companies an amount of subsidy bonds authorized to be issued by the United States under said acts sufficient to secure the full completion as a first-class road of all sections of said road upon which bonds have already been issued, or

Subsidy bonds to be withheld sufficient to secure the full completion, as a first-class road, of all sections of such road, &c.

in lieu of such bonds he may receive as such security an equal amount of the first mortgage bonds of such company; and if it shall appear to the President that the amount of subsidy bonds yet to be issued to either of said companies is insufficient to insure the full completion of such road, he may make requisition upon such company for a sufficient amount of bonds already issued to said company, or in his discretion of their first mortgage bonds, to secure the full completion of the same. And in default of obtaining such security as [is] in this section provided, the President may authorize and direct the Attorney-General to institute such suits and proceedings on behalf and in the name of the United States, in any court of the United States having jurisdiction, as shall be necessary or proper to compel the giving of such security, and thereby, or in any manner otherwise, to protect the interests of the United States in said road, and to insure the full completion thereof as a first-class road, as required by law and the statutes in that case made.

If the amount to be issued is insufficient, &c.

Attorney-General to institute necessary suits.

SEC. 4. *And be it further resolved*, That the Attorney-General of the United States be, and he is hereby, authorized and directed to investigate whether or not the charter and all the franchises of the Union Pacific Railroad Company and of the Central Pacific Railroad Company have not been forfeited, and to institute all necessary and proper legal proceedings; also, to investigate whether or not said companies have or have not made any illegal dividends upon their stock, and if so to institute the necessary proceedings to have the same reimbursed; and also to investigate whether any of the directors or any other agents or employés of said companies have or not violated any penal law, and if so to institute the proper criminal proceedings against all persons who have violated such laws.

Attorney-General to investigate whether the charter of the Union Pacific and Central Pacific railroads have not been forfeited, &c.

To institute criminal proceedings, if, &c.

Approved April 10, 1869.

ACT OF MARCH 3, 1871.

* * * * * * *

16 Stat., p. 525

SEC. 9. That, in accordance with the fifth section of the act approved July two, eighteen hundred and sixty four, entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes,' approved July first, eighteen hundred and

sixty two," the Secretary of the Treasury is hereby directed to pay over in money to the Pacific Railroad companies mentioned in said act, and performing services for the United States, one half of the compensation at the rate provided by law for such services, heretofore or hereafter rendered: *Provided*, That this section shall not be construed to affect the legal rights of the government or the obligations of the companies, except as herein specifically provided.

ACT OF MARCH 3, 1873.

AN ACT making appropriations for the legislative, executive, and judicial expenses of the government for the year ending June 30, 1874, and for other purposes. 17 Stat., 508.

* * * * * * *

Secretary of the Treasury to withhold payments to certain railroad companies for freight, &c.

SEC. 2. That the Secretary of the Treasury is directed to withhold all payments to any railroad company and its assigns, on account of freights or transportation over their respective roads, of any kind, to the amount of payments made by the United States for interest upon bonds of the United States issued to any such company, and which shall not have been reimbursed, together with the five per cent. of net earnings due and unapplied as provided by law: and any such company may bring suit in the court of claims to recover the price of such freight and transportation; and in such suit the right of such company to recover the same upon the law and the facts of the case shall be determined, and also the rights of the United States upon the merits of all the points presented by it in answer thereto by them, and either party to such suit may appeal to the supreme court; and both said courts shall give such cause or causes precedence of all other business.

Companies may bring suit in court of claims.

Appeal to supreme court. Causes to have precedence.

* * * * * * *

Attorney-General to bring suit in equity against the Union Pacific Railroad Company and all persons who, &c.

SEC. 4. That the Attorney-General shall cause a suit in equity to be instituted in the name of the United States against the Union Pacific Railroad Company, and against all persons who may, in their own names or through any agents, have subscribed for or received capital stock in said road, which stock has been paid for in full in money, or who may have to ived, as dividends or otherwise, portions of the capwhi tock of said road, or the proceeds or avails thereof, pany er property of said road, unlawfully and contrary court ity, or who may have received as profits or pron whi of contracts for construction or equipment of said

road, or other contracts therewith, moneys or other property which ought in equity to belong to said railroad corporation, or who may, under pretence of having complied with the acts to which this is an addition, have wrongfully and unlawfully received from the United States bonds, moneys, or lands which ought in equity to be accounted for and paid to said railroad company or to the United States, and to compel payment for said stock, and the collection and payment of such moneys, and the restoration of such property, or its value, either to said railroad corporation or to the United States, whichever shall in equity be held entitled thereto. Said suit may be brought in the circuit court in any circuit, and all said parties may be made defendants in one suit. Decrees may be entered and enforced against any one or more parties defendant without awaiting the final determination of the cause against other parties. The court where said cause is pending may make such orders and decrees and issue such process as it shall deem necessary to bring in new parties or the representatives of parties deceased, or to carry into effect the purposes of this act. On filing the bill, writs of subpœna may be issued by said court against any parties defendant, which writ shall run into any district, and shall be served, as other like process, by the marshal of such district. The books, records, correspondence, and all other documents of the Union Pacific Railroad Company, shall at all times be open to inspection by the Secretary of the Treasury, or such persons as he may delegate for that purpose. The laws of the United States providing for proceedings in bankruptcy shall not be held to apply to said corporation. No dividend shall hereafter be made by said company but from the actual net earnings thereof; and no new stock shall be issued, or mortgages or pledges made on the property or future earnings of the company, without leave of Congress, except for the purpose of funding and securing debt now existing, or the renewals thereof. No director or officer of said road shall hereafter be interested, directly or indirectly, in any contract therewith, except for his lawful compensation as such officer. Any director or officer who shall pay or declare, or aid in paying or declaring, any dividend, or creating any mortgage or pledge not inhibited by this act, shall be punished by imprisonment not exceeding two years, and by fine not exceeding five times the sand dollars. The proper circuit court of the United ary, and red and

Suit to be brought in any circuit court.

Decrees.

New parties, &c.

Writs of subpœna to run into any district, and how served.

Books of the railroad company to be open to inspection.

Bankrupt laws not to apply.

Dividends, new stock, mortgages, &c.

No director to be interested in any contract, except, &c.

Penalty.

shall have jurisdiction to hear and determine all cases of mandamus to compel said Union Pacific Railroad Company to operate its road as required by law.

Jurisdiction of circuit court to issue mandamus.

Approved March 3, 1873.

ACT OF JUNE 20, 1874.

AN ACT making additions to the fifteenth section of the act approved July 2, 1864, entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military, and other purposes,' approved July 1, 1862."

18 Stat., 111.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be, and is hereby, added to the fifteenth section of the act approved July second, eighteen hundred and sixty-four, entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military, and other purposes,' approved July first, eighteen hundred and sixty-two," the following words, namely: "And any officer or agent of the companies authorized to construct the aforesaid roads, or of any company engaged in operating either of said roads, who shall refuse to operate and use the road or telegraph under his control, or which he is engaged in operating for all purposes of communication, travel, and transportation, so far as the public and the government are concerned, as one continuous line, or shall refuse, in such operation and use, to afford and secure to each of said roads equal advantages and facilities as to rates, time, or transportation, without any discrimination of any kind in favor of, or adverse to, the road or business of any or either of said companies, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars, and may be imprisoned not less than six months. In case of failure or refusal of the Union Pacific Railroad Company, or either of said branches, to comply with the requirements of this act and the acts to which this act is amendatory, the party injured or the company aggrieved may bring an action in the district or circuit court of the United States, in the territory, district, or circuit in which any portion of the road of the defendant may be

Certain road to be operated as continuous line with equal facilities.

Agents or officers to be fined in case of refusal.

Union Pacific Company to be sued in case of refusal.

situated, for damages on account of such failure or refusal; and, upon recovery, the plaintiff shall be entitled to judgment for treble the amount of all excess of freight and fares collected by the defendant, and for treble the amount of damages sustained by the plaintiff by such failure or refusal; and for each and every violation of or failure to comply with the requirements of this act, a new cause of action shall arise; and in case of suit in any such territory, district, or circuit, process may be served upon any agent of the defendant found in the territory, district, or circuit in which such suit may be brought, and such service shall be by the court held to be good and sufficient; and it is hereby provided that for all the purposes of said act, and of the acts amendatory thereof, the railway of the Denver Pacific Railway and Telegraph Company shall be deemed and taken to be a part and extension of the road of the Kansas Pacific Railroad, to the point of junction thereof with the road of the Union Pacific Railroad Company at Cheyenne, as provided in the act of March third, eighteen hundred and sixty-nine.

Penalty fixed.

Approved June 20, 1874.

ACT OF JUNE 22, 1874.

18 Stat., 200.

AN ACT providing for the collection of moneys due the United States from the Pacific Railroad Companies.

Secretary of the Treasury to demand five per cent. of net earnings.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and hereby is, directed to require payment of the railroad companies, their successors and assigns, or the successors or assigns of any or either of said companies, of all sums of money due, or to become due, the United States for the five per centum of the net earnings provided for by the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred and sixty-two, or by any other act or acts in relation to the companies therein named, or any other such company or companies; and in case either of said railroad companies shall neglect or refuse to pay the same within sixty days after demand therefor made upon the treasurer of such railroad company, the secretary of the treasury shall certify that fact to the Attorney-General, who shall thereupon institute the neces-

Attorney-General to bring suit.

sary suits and proceedings to collect, and otherwise obtain redress in respect of the same, in the proper circuit courts of the United States, and prosecute the same, with all convenient dispatch, to a final determination.

Approved June 22, 1874.

ACT OF MAY 7, 1878.

CHAP. 96.—An act to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred and sixty-two, and also to alter and amend the act of Congress approved July second, eighteen hundred and sixty-four, in amendment of said first-named act. 20 Stat., 56.

Whereas, on the first day of July, anno Domini eighteen hundred and sixty-two, Congress passed an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes;" and

Whereas afterward, on the second day of July, anno Domini eighteen hundred and sixty-four, Congress passed an act in amendment of said first-mentioned act; and

Whereas the Union Pacific Railroad Company, named in said acts, and under the authority thereof, undertook to construct a railway, after the passage thereof, over some part of the line mentioned in said acts; and

Whereas, under the authority of the said two acts, the Central Pacific Railroad Company of California, a corporation existing under the laws of the State of California, undertook to construct a railway, after the passage of said acts, over some part of the line mentioned in said acts; and

Whereas the United States, upon demand of said Central Pacific Railroad Company, have heretofore issued, by way of loan and as provided in said acts, to and for the benefit of said company, in aid of the purposes named in said acts, the bonds of the United States, payable in thirty years from the date thereof, with interest at six per centum per annum, payable half yearly, to the amount of twenty-five million eight hundred and eighty-five thousand one hundred and twenty dollars, which said bonds have been sold in the market or otherwise disposed of by said company; and

Whereas the said Central Pacific Company has issued and disposed of an amount of its own bonds equal to the amount

so issued by the United States, and secured the same by mortgage, and which are, if lawfully issued and disposed of, a prior and paramount lien, in the respect mentioned in said acts, to that of the United States, as stated, and secured thereby; and

Whereas, after the passage of said acts, the Western Pacific Railroad Company, a corporation then existing under the laws of California, did, under the authority of Congress, become the assignee of the rights, duties and obligations of the said Central Pacific Railroad Company, as provided in the act of Congress passed on the third of March, anno Domini eighteen hundred and sixty-five, and did, under the authority of the said act and of the acts aforesaid, construct a railroad from the city of San Jose to the city of Sacramento, in California, and did demand and receive from the United States the sum of one million nine hundred and seventy thousand five hundred and sixty dollars of the bonds of the United States, of the description before mentioned as issued to the Central Pacific Company, and in the same manner and under the provisions of said acts; and upon and in respect of the bonds so issued to both said companies, the United States have paid interest to the sum of more than thirteen and a half million dollars, which has not been reimbursed; and

Whereas said Western Pacific Railroad Company has issued and disposed of an amount of its own bonds equal to the amount so issued by the United States to it, and secured the same by mortgage, which are, if lawfully issued and disposed of, a prior and paramount lien to that of the United States, as stated and secured thereby; and

Whereas said Western Pacific Railroad Company has since become merged in, and consolidated with, said Central Pacific Railroad Company, under the name of the Central Pacific Railroad Company, whereby the said Central Pacific Railroad Company has become liable to all the burdens, duties, and obligations before resting upon said Western Pacific Railroad Company; and divers other railroad companies have been merged in and consolidated with said Central Pacific Railroad Company; and

Whereas the United States, upon the demand of the said Union Pacific Railroad Company, have heretofore issued by way of loan to it and as provided in said acts, the bonds of the United States, payable in thirty years from the date thereof, with interest at six per centum per annum, payable half-yearly, the principal sums of which amount to twenty-seven million two hundred and thirty-six thousand

five hundred and twelve dollars; on which the United States have paid over ten million dollars interest over and above all reimbursements; which said bonds have been sold in the market or otherwise disposed of by said corporation; and

Whereas said corporation has issued and disposed of an amount of its own bonds equal to the amounts so issued to it by the United States as aforesaid, and secured the same by mortgage, and which are, if lawfully issued and disposed of, a prior and paramount lien, in the respect mentioned in said acts, to that of the United States, as stated, and secured thereby; and

Whereas the total liabilities (exclusive of interest to accrue) to all creditors, including the United States, of the said Central Pacific Company, amount in the aggregate to more than ninety-six million dollars, and those of the said Union Pacific Railroad Company to more than eighty-eight million dollars; and

Whereas the United States, in view of the indebtedness and operations of said several railroad companies respectively, and of the disposition of their respective incomes, are not and cannot, without further legislation, be secure in their interests in and concerning said respective railroads and corporations, either as mentioned in said acts or otherwise; and

Whereas a due regard to the rights of said several companies respectively, as mentioned in said act of eighteen hundred and sixty-two, as well as just security to the United States in the premises, and in respect of all the matters set forth in said act, require that the said act of eighteen hundred and sixty-two be altered and amended as hereinafter enacted; and

Whereas, by reason of the premises also, as well as for other causes of public good and justice, the powers provided and reserved in said act of eighteen hundred and sixty-four for the amendment and alteration thereof ought also to be exercised as hereinafter enacted: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the net earnings mentioned in said act of eighteen hundred and sixty-two, of said railroad companies respectively, shall be ascertained by deducting from the gross amount of their earnings respectively the necessary expenses actually paid within the year in operating the same and keeping the same in a state of repair, and also the sum paid by them respectively within the year in discharge of interest on their first mortgage bonds, whose lien has priority over the lien of the

United States, and excluding from consideration all sums owing or paid by said companies respectively for interest upon any other portion of their indebtedness; and the foregoing provision shall be deemed and taken as an amendment of said act of eighteen hundred and sixty-four, as well as of said act of eighteen hundred and sixty-two. This section shall take effect on the thirtieth day of June next, and be applicable to all computations of net earnings thereafter; but it shall not affect any right of the United States or of either of said railroad companies existing prior thereto.

SEC. 2. That the whole amount of compensation which may, from time to time, be due to said several railroad companies respectively for services rendered for the Government shall be retained by the United States, one-half thereof to be presently applied to the liquidation of the interest paid and to be paid by the United States upon the bonds so issued by it as aforesaid, to each of said corporations severally, and the other half thereof to be turned into the sinking-fund hereinafter provided, for the uses therein mentioned.

SEC. 3. That there shall be established in the Treasury of the United States a sinking-fund, which shall be invested by the Secretary of the Treasury in bonds of the United States; and the semi-annual income thereof shall be in like manner from time to time invested, and the same shall accumulate and be disposed of as hereinafter mentioned. And in making such investments the Secretary shall prefer the five per centum bonds of the United States, unless, for good reasons appearing to him, and which he shall report to Congress, he shall at any time deem it advisable to invest in other bonds of the United States. All the bonds belonging to said fund shall, as fast as they shall be obtained, be so stamped as to show that they belong to said fund, and that they are not good in the hands of other holders than the Secretary of the Treasury, until they shall have been indorsed by him, and publicly disposed of pursuant to this act.

SEC. 4. That there shall be carried to the credit of the said fund, on the first day of February in each year, the one-half of the compensation for services hereinbefore named, rendered for the Government by said Central Pacific Railroad Company, not applied in liquidation of interest; and, in addition thereto, the said company shall, on said day in each year, pay into the Treasury, to the credit of said sinking-fund, the sum of one million two hundred thousand dollars, or so much thereof as shall be necessary to make the five per centum of the net earnings of its said road payable to the United States under said act of eight-

een hundred and sixty-two, and the whole sum earned by it as compensation for services rendered for the United States, together with the sum by this section required to be paid, amount in the aggregate to twenty-five per centum of the whole net earnings of said railroad-company, ascertained and defined as hereinbefore provided, for the year ending on the thirty-first day of December next preceding. That there shall be carried to the credit of the said fund, on the first day of February in each year, the one-half of the compensation for services hereinbefore named, rendered for the Government by said Union Pacific Railroad Company, not applied in liquidation of interest; and, in addition thereto, the said company shall, on said day in each year, pay into the Treasury, to the credit of said sinking-fund, the sum of eight hundred and fifty thousand dollars, or so much thereof as shall be necessary to make the five per centum of the net earnings of its said road payable to the United States under said act of eighteen hundred and sixty-two, and the whole sum earned by it as compensation for services rendered for the United States, together with the sum by this section required to be paid, amount in the aggregate to twenty-five per centum of the whole net earnings of said railroad company, ascertained and defined as hereinbefore provided, for the year ending on the thirty-first day of December next preceding.

SEC. 5. That whenever it shall be made satisfactorily to appear to the Secretary of the Treasury, by either of said companies, that seventy-five per centum of its net earnings as hereinbefore defined, for any current year are or were insufficient to pay the interest for such year upon the obligations of such company, in respect of which obligations there may exist a lien paramount to that of the United States, and that such interest has been paid out of such net earnings, said Secretary is hereby authorized, and it is made his duty, to remit for such current year so much of the twenty-five per centum of net earnings required to be paid into the sinking fund, as aforesaid, as may have been thus applied and used in the payment of interest as aforesaid.

Sec. 6. That no dividend shall be voted, made, or paid for or to any stockholder or stockholders in either of said companies respectively at any time when the said company shall be in default in respect of the payment either of the sums required as aforesaid to be paid into said sinking-fund, or in respect of the payment of the said five per centum of the net earnings, or in respect of interest upon

any debt the lien of which, or of the debt on which it may accrue, is paramount to that of the United States; and any officer or person who shall vote, declare, make, or pay, and any stockholder of any of said companies who shall receive any such dividend contrary to the provisions of this act, shall be liable to the United States for the amount thereof, which, when recovered, shall be paid into said sinking-fund. And every such officer, person, or stockholder who shall knowingly vote, declare, make, or pay any such dividend, contrary to the provisions of this act, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding ten thousand dollars, and by imprisonment not exceeding one year.

SEC. 7. That the said sinking-fund so established and accumulated shall, at the maturity of said bonds so respectively issued by the United States, be applied to the payment and satisfaction thereof, according to the interest and proportion of each of said companies in said fund, and of all interest paid by the United States thereon, and not reimbursed, subject to the provisions of the next section.

SEC. 8. That said sinking-fund so established and accumulated shall, according to the interest and proportion of said companies respectively therein, be held for the protection, security, and benefit of the lawful and just holders of any mortgage or lien debts of such companies respectively, lawfully paramount to the rights of the United States, and for the claims of other creditors, if any, lawfully chargeable upon the funds so required to be paid into said sinking-fund, according to their respective lawful priorities, as well as for the United States, according to the principles of equity, to the end that all persons having any claim upon said sinking-fund may be entitled thereto in due order; but the provisions of this section shall not operate or be held to impair any existing legal right, except in the manner in this act provided, of any mortgage, lien, or other creditor of any of said companies respectively, nor to excuse any of said companies respectively from the duty of discharging, out of other funds, its debts to any creditor except the United States.

SEC. 9. That all sums due to the United States from any of said companies respectively, whether payable presently or not, and all sums required to be paid to the United States or into the Treasury, or into said sinking-fund under this act, or under the acts hereinbefore referred to, or otherwise, are hereby declared to be a lien upon all the property, estate, rights, and franchises of every description granted

or conveyed by the United States to any of said companies respectively or jointly, and also upon all the estate and property, real, personal, and mixed, assets, and income of the said several railroad companies respectively, from whatever source derived, subject to any lawfully prior and paramount mortgage, lien, or claim thereon. But this section shall not be construed to prevent said companies respectively from using and disposing of any of their property or assets in the ordinary, proper and lawful course of their current business, in good faith and for valuable consideration.

SEC. 10. That it is hereby made the duty of the Attorney-General of the United States to enforce, by proper proceeding against the several railroad companies respectively or jointly, or against either of them, and others, all the rights of the United States under this act and under the acts hereinbefore mentioned, and under any other act of Congress or right of the United States; and in any suit or proceeding already commenced, or that may be hereafter commenced, against any of said companies, either alone or with other parties, in respect of matters arising under this act, or under the acts or rights hereinbefore mentioned or referred to, it shall be the duty of the court to determine the very right of the matter without regard to matters of form, joinder of parties, multifariousness, or other matters not affecting the substantial rights and duties arising out of the matters and acts hereinbefore stated and referred to.

SEC. 11. That if either of said railroad companies shall fail to perform all and singular the requirements of this act and of the acts hereinbefore mentioned, and of any other act relating to said company, to be by it performed, for the period of six months next after such performance may be due, such failure shall operate as a forfeiture of all the rights, privileges, grants, and franchises derived or obtained by it from the United States; and it shall be the duty of the Attorney-General to cause such forfeiture to be judicially enforced.

SEC. 12. That nothing in this act shall be construed or taken in any wise to affect or impair the right of Congress at any time hereafter further to alter, amend, or repeal the said acts hereinbefore mentioned; and this act shall be subject to alteration, amendment, or repeal, as, in the opinion of Congress, justice or the public welfare may require. And nothing herein contained shall be held to deny, exclude, or impair any right or remedy in the premises now existing in favor of the United States.

SEC. 13. That each and every of the provisions in this act contained shall severally and respectively be deemed, taken, and held as in alteration and amendment of said act of eighteen hundred and sixty-two and of said act of eighteen hundred and sixty-four respectively, and of both said acts.

Approved, May 7, 1878.

ACT OF JUNE 19, 1878.

20 Stat. 169.

CHAP. 316.—An act to create an Auditor of Railroad Accounts and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section twenty of the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes", approved July first, anno Domini eighteen hundred and sixty-two, and the act entitled "An act relative to filing reports of railroad companies" approved June twenty-fifth, anno Domini eighteen hundred and sixty eight, be, and the same are hereby, repealed.

SEC 2. That the office of Auditor of Railroad Accounts is hereby established as a bureau of the Interior Department. The said Auditor shall be appointed by the President of the United States, by and with the advice and consent of the Senate. The annual salary of the said Auditor shall be, and is hereby, fixed at the sum of five thousand dollars. To assist the said Auditor to perform the duties of said office, the Secretary of the Interior shall appoint one bookkeeper at an annual salary of two thousand four hundred dollars, one assistant bookkeeper at an annual salary of two thousand dollars, one clerk at an annual salary of one thousand four hundred dollars, and one copyist at an annual salary of nine hundred dollars. Actual and necessary traveling and other expenses incurred in visiting the offices of the railroad companies hereinafter described, and for which vouchers shall be rendered, are hereby allowed, not to exceed the sum of two thousand dollars per annum; and it is hereby specially provided that each of said railroad companies shall furnish transportation over its own road, without expense to the United States, for the said Auditor or any person acting under his direction. Incidental expenses for books, stationery, and other material necessary for the use of said bureau are hereby allowed not

to exceed the sum of seven hundred dollars per annum. And the sum of twelve thousand dollars is hereby appropriated for the uses and purposes of this act for the fiscal year ending June thirtieth, anno Domini eighteen hundred and seventy-nine.

SEC. 3 That the duties of the said Auditor, under and subject to the direction of the Secretary of the Interior, shall be, to prescribe a system of reports to be rendered to him by the railroad companies whose roads are in whole or in part west, north, or south of the Missouri River, and to which the United States have granted any loan of credit or subsidy in bonds or lands; to examine the books and accounts of each of said railroad companies once in each fiscal year, and at such other times as may be deemed by him necessary to determine the correctness of any report received from them; to assist the government directors of any of said railroad companies in all matters which come under their cognizance whenever they may officially request such assistance; to see that the laws relating to said companies are enforced; to furnish such information to the several departments of the government in regard to tariffs for freight and passengers and in regard to the accounts of said railroad companies as may be by them required, or, in the absence of any request therefor, as he may deem expedient for the interest of the government; and to make an annual report to the Secretary of the Interior, on the first day of November, on the condition of each of said railroad companies, their road, accounts, and affairs, for the fiscal year ending June thirtieth immediately preceding.

SEC 4. That each and every railroad company aforesaid which has received from the United States any bonds of the said United States, issued by way of loan to aid in constructing or furnishing its road, or which has received from the United States any lands granted to it for a similar purpose, shall make to the said Auditor any and all such reports as he may require from time to time and shall submit its books and records to the inspection of said Auditor or any person acting in his place and stead, at any time that the said Auditor may request, in the office where said books and records are usually kept; and the said Auditor, or his authorized representative, shall make such transcripts from the said books and records as he may desire.

SEC. 5 That if any railroad company aforesaid shall neglect or refuse to make such reports as may be called for, or refuse to submit its books and records to inspection, as provided in section four of this act, such neglect or refusal shall

operate as a forfeiture, in each case of such neglect or refusal, of a sum not less than one thousand nor more than five thousand dollars, to be recovered by the Attorney-General of the United States in the name and for the use and benefit of the United States; and it shall be the duty of the Secretary of the Interior, in all such cases of neglect or refusal as aforesaid, to inform the Attorney-General of the facts, to the end that such forfeiture or forfeitures may be judicially enforced.

SEC. 6. This act shall apply to any and all persons or corporations into whose hands either of said railroads may lawfully come, as well as to the original companies.

SEC 7. This act shall take effect on and after the first day of July, anno Domini eighteen hundred and seventy-eight.

Approved, June 19, 1878.

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